QORTI CIVILI PRIM`AWLA
(GURISDIZZJONI KOSTITUZZJONALI)

ONOR. IMHALLEF
JOSEPH ZAMMIT McKEON

Illum it-Tnejn 14 ta` Dicembru 2020

Kawza Nru. 2
Rikors Nru. 220/2019 JZM

Doreen Grima (K.I. 213265M), Georgina armla minn Philip Grima (K.I. 320638M) u Joseph Grima (K.I. 714462M)

kontra

Avukat Generali, u b` digriet tal-24 ta` Frar 2020 l-isem "Avukat Generali" inbidel u gie jaqra "Avukat tal-Istat"

u

Spira Zahra (KI 0951144M)

Il-Qorti :

I. **<u>Preliminari</u>**

Rat ir-rikors li kien prezentat fl-<u>14 ta` Novembru 2019</u> li jaqra hekk :–

(1) Illi r-rikorrenti huma lkoll proprjetarji tal-fond ossia 10, Triq il-Karmnu, Zabbar gia mezzanin minghajr numru mmarkat b`ittra A f`Carmel Street, Haz-Zabbar sovvrapost in parti ghall-proprjeta` tar-rikorrenti.

(2) Illi b`kuntratt ta` koncessjoni emfitewtika temporanja tal-11 ta` Mejju 1964 fl-atti tan-Nutar Dottor Joseph Felix Abela li kopja tieghu huwa hawn anness u mmarkat bhala "Dokument A" missier u zewg l-esponenti ossia l-mejjet Philip Grima kien ikkonceda b`titolu ta` sub-koncessjoni enfitewtika temporanja ghal 17-il sena b`effett mill-1 ta` Lulju 1964 lil Antonio Bugeja, il-fond ossia mezzanin bin-numru 10, Triq il-Karmnu, Zabbar, u dan versu s-subcens annwu u temporanju ta` Lm 32 fis-sena pagabbli kull tliet xhur bil-quddiem.

(3) Illi sussegwentement fl-1976, Antonio Bugeja kien kera l-fond ghaz-zmien li kien ghad fadal mis-subcens lil Carmel u Spira konjugi Zahra fejn huma bdew jirrisjedu u dan anke kif jirrizulta minn estratti mir-Registru Elettorali li qed jigu hawn annessi u mmarkati bhala Dokument I sa M ossia mill-1977 sal-1981 u wara l-mewt ta` zewgha Carmel Zahra, l-intimata Spira Zahra ghadha hekk tirrisjedi fil-fond in kwistjoni mill-1975 sal-lum il-gurnata fejn illum il-gurnata hemm ukoll it-tifel taghha Christopher Zahra (KI 0362470M) li qieghed registrat taht l-istess indirizz ta` ommu.

(4) Illi din il-koncessjoni enfitewtika temporanja skadiet fit-30 ta` Gunju 1981 izda l-intimata Zahra xorta baqghet tghix fil-fond in kwistjoni taht titolu ta` kera doppja ai termini tal-Att XXIII tal-1979.

(5) Illi l-kera fl-1986 kellha tkun ta` Lm 43 fis-sena, fl-1992 kellha tawmenta ghal Lm 86 fis-sena, fl-2009 kellha tawmenta ghal €201, fl-2013 kellha tawmenta ghal €214 u fl-2016 kellha terga` tawmenta ghal €220, bl-awment li jmiss jkun fl-1 ta` Jannar 2019 skont l-indici tal-gholi tal-hajja.

(6) Illi dan il-fond ma kienx fond dekontrollat kif jirrizulta minn "Dokument B" hawn anness.

(7) Illi minkejja li din il-koncessjoni enfitewtika temporanja skadiet fit-30 ta` Gunju 1981 l-intimata Zahra flimkien mal-mejjet zewgha baqghet tirrisjedi fil-fond in kwistjoni stante li kienu cittadini Maltin u stante li l-fond in kwistjoni kienet ir-residenza ordinarja taghhom, liema fakolta` kienet inghatat lilhom bl-Att XXIII tal-1979 taht titolu ta` kera b`zieda fil-kera skont ir-rata tal-inflazzjoni li ma setghet qatt teccedi d-doppju. B`hekk l-intimata Zahra flimkien mal-mejjet zewgha inghatalhom id-dritt li jibqghu jghixu fil-fond b`zieda fil-kera mhux skont il-valur lokatizju tal-fond fuq is-suq.

(8) Illi originarjament dan il-fond in kwistjoni kien jappartjeni lill-missier u zewg ir-rikorrenti ossia Philip Grima li miet fit-2 ta` Dicembru 2015 skont certifikat tal-mewt hawn anness u mmarkat bhala "Dokument C".

(9) Illi l-wirt tal-mejjet Philip Grima ddevolva `ab intestato` minkejja t-testment sigriet tieghu tat-18 ta` Gunju 2007 li kopja tieghu qed tigi hawn annessa u mmarkata bhala "Dokument D" kif ukoll kopja tal-ftuh tal-Qorti Civili Sezzjoni Volontarja tal-5 ta` April 2016 li qed tigi hawn annessa u mmarkata bhala "Dokument E" u c-certifikati ta` testmenti "Dokumenti F u G".

(10) Illi l-wirt tal-mejjet Philip Grima gie debitament dikjarat lill-Kummissarju tat-Taxxi Interni permezz ta` dikjarazzjoni `causa mortis` tal-1 ta` Dicembru 2016 fl-atti tan-Nutar Dottor Herbert Cassar li estratt minnha koncernanti l-fond de quo qed tigi hawn annessa u mmarkata bhala "Dokument H".

(11) Illi effettivament qabel ma dahal fis-sehh l-Att XXIII tal-1979, gjaladarba l-fond ma kienx fond dekontrollat kif jirrizulta mid-Dokument B surreferit l-fond kien soggett ghar-rekwizizzjoni u l-fair rent u ghalhekk il-konsulent legali tal-antekawza tar-rikorrent kien ta parir lil zewg u missier ir-rikorrenti biex jaghti b`koncessjoni emfitewtika temporanja l-fond imsemmi biex b`hekk id-disposizzjonijiet tar-Rent Restrictions (Dwelling Houses) Ordinance 1944 ma jkunux japplikaw.

(12) Illi kieku l-antekawza tar-rikorrenti kera l-fond lil Antonio Bugeja fejn sussegwentement inghata lill-intimata Zahra, kien japplika l-fair rent li ma kien fair rent xejn stante l-kumpens li huwa seta` jircievi bhala kera kien dak kif stabbilit fl-4 ta` Awwissu 1914 oltre li l-fond in kwistjoni kien ikun soggett ghar-rekwizizzjoni.

(13) Illi l-mejjet Philip Grima ried jipprotegi l-proprjeta` tieghu sabiex fit-terminazzjoni tal-koncessjoni emfitewtika temporanja jerga` jiehu lura hwejgu minghajr okkupazzjoni.

(14) Illi bid-dhul fis-sehh tal-Att XXIII tal-1979, din is-sitwazzjoni tbiddlet radikalment u l-intimata giet moghtija d-dritt li tibqa` tghix fil-fond b`kera irrizorja li ma tirriflettix is-suq u l-anqas izzomm bilanc bejn id-drittijiet tas-sid u dawk tal-inkwilin u dan stante li l-intimata Spira Zahra u l-mejjet zewgha li kienu cittadini Maltin u kienu juzaw il-fond bhala residenza ordinarja taghhom, bl-unika awment permessibbli fil-kera jkun dak skont ir-rata ta` inflazzjoni kif determinata mill-Awtoritajiet Governattivi.

(15) Illi ghalhekk effettivament ir-rikorrenti u l-antekawza minnhom gew spossessatat mid-dritt ta` uzu tal-proprjeta` taghhom, wara li skada t-terminu lokatizju u ghalhekk gew assoggettat ghal relazzjoni forzata ta` sid u inkwilin ghal perjodu indefinit u ntilef il-bilanc bejn l-interessi tal-inkwilini u dawk tas-sidien, minkejja l-ftehim ta` koncessjoni emfitewtika temporanja, Dokument A surreferit.

(16) Illi b`dan il-mod, ir-rikorrenti gew mcahhda mit-tgawdija tal-proprjeta` taghhom, minghajr ma gie moghti lilhom kumpens xieraq ghat-tehid tal-pussess tal-istess fond, minkejja l-kuntratt ta` koncessjoni emfitewtika temporanja miftehma bejn Philip Grima u Antonio Bugeja fejn sussegwentement dan tal-ahhar ghaddieh lill-intimata Spira Zahra u dan qabel id-dhul in vigore tal-Att XXIII tal-1979 u infatti l-unika awment possibli kien li tithallas iz-zieda fil-kera skont ir-rata tal-inflazzjoni pero` qatt iktar mid-doppju tal-kera wara l-gheluq tal-perijodu emfitewtiku temporanju.

(17) Illi fil-fatt, il-valur lokatizzju tal-istess fond, dak iz-zmien ossija fit-30 ta` Gunju 1981 u kull 15-il sena sussegwenti kien ferm oghla minn dak moghti lilhom bl-Att XXIII tal-1979 kif ser jigi pruvat waqt it-trattazzjoni tal-kawza.

(18) Illi minhabba l-impossibilita` tar-rikorrenti biex jiehdu lura l-pussess tal-fond ossia li jergghu jiehdu lura l-fond proprjeta` taghhom id-disposizzjonijiet tal-Att XXIII tal-1979 qieghed jilledi d-drittijiet taghhom ta` proprjeta`, kif protetti mill-Kostituzzjoni ta` Malta u mill-Konvenzjoni Ewropea.

*(19) Illi huwa ghalhekk huma u l-antekawza minnhom gew pprivati mill-proprjeta` taghhom stante illi skont il-principji stabbiliti mill-Konvenzjoni Ewropea, il-principju tal-legalita` jippresupponi illi l-applikazzjoni tal-provvedimenti tal-ligi domestika, ghandhom ikunu sufficjentement accessibli, precizi u li wiehed ghandu jistenna fi stat demokratiku fl-applikazzjoni taghhom – vide **Broniowski vs. Poland (GC)** no. 31443/96, 147, ECHR 2004-V and **Saliba vs. Malta,** no. 4251/02, 31, 8 November 2005 u **Amato Gauci vs. Malta** – Applikazzjoni Nru. 47045/06 deciza fl-15 ta` Settembru 2009.*

(20) Illi fic-cirkostanzi, meta l-antekawza tar-rikorrenti ftiehem fuq koncessjoni emfitewtika temporanja ta` fond mhux dekontrollat, huwa qatt ma kellu jippretendi illi b`legislazzjoni tal-Att XXIII tal-1979, il-Gvern ta` Malta kellu jghaddi Ligi li juzurpalu d-dritt tieghu ta` liberu trasferiment ta` proprjeta` mhux skont il-ftehim raggunt u jaghti dritt ghar-renova tal-lokazzjoni lill-inkwilini mhux taht kondizzjonijiet gusti billi jimponilu li jircievi kera irrizorja mhux skont is-suq u li ma tirriflettix il-valur lokatizju tal-fond, liema ligi ghalhekk ma krejatx bilanc tar-rekwizit tal-principju ta` proporzjonalita`.

*(21) Illi principju massimu li ghandu jigi segwit, hu li l-individwu m`ghandux jigi assoggettat ghal legislazzjoni li huwa ma setax jipprevedi li ggib toqol u telf ezagerat ukoll fil-kumpens li ghandu jircievi ghat-tehid effettiv tal-proprjeta` tieghu kif gara f`dan il-kaz. – Vide **Sporrong and Lonroth vs. Sweden** (1982), 69-74 u **Brumarescu vs. Romania** (GC) no. 28342/95, 78, ECHR 1999-VII u **Spadea and Scalabrino vs. Italy**, deciza fit-28 ta` Settembru 1995, 33, Series A no. 315 – B u **Immobiliare Saffi vs. Italy** (GC) no. 22774/93, 54, ECHR 1999-V and Broniowski - 151)*

(22) Illi gialadarba kien hemm ksur tal-Artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni Ewropea, l-intimati ghandhom ihallsu kumpens biex ikun hemm sodisfazzjon gust lir-rikorrenti ghal hsara minnu sofferti.

(23) Illi ghalhekk ir-rikorrenti huma intitolati ghal kumpens minhabba t-telf fil-kontroll, uzu u tgawdija tal-proprjeta` taghhom minn meta huma ma setghux jiehdu lura l-proprjeta` taghhom minhabba l-legislazzjoni intavolata bl-Att XXIII tal-1979 u dan mill-31 ta` Lulju 1990 – Vide Kingsley vs. The United Kingdom (GC) no. 35605/97, 40, ECHR 2002-IV; Runkee and White vs. The United Kingdom - Nos. 42949/98 u 53134/99, 52, deciza fl-10 ta` Mejju 2007; Akkus vs. Turkey – deciza fid-9 ta` Lulju, 1997, Reports 1997-IV, 35; Romanchenko vs. Ukraine – No. 5596/03, 22 ta` Novembru 2005, 30, unpublished; Prodan vs. Moldova – No. 49806/99, 73, ECHR 2004-III (extracts); Ghigo vs. Malta – No. 31122/05, 20, deciza 17 ta` Lulju 2008; u Zammit and Attard Cassar vs MALTA deciza fit-30 ta` Lulju 2015 mill-Qorti Ewropea tad-Drittijiet tal-Bniedem.

(24) Illi barra minn hekk il-Prim Awla tal-Qorti Civili, Sede Kostituzzjonali fil-kawza "Rose Borg vs Avukat Generali et" deciza fil-25 ta` Frar 2016 u kkonfermata mill-Qorti Kostituzzjonali fil-11 ta` Lulju 2016 iddecidiet illi f`kaz simili bhal dan meta giet iffirmata koncessjoni emfitewtika temporanja s-sidien ma setghu qatt jipprevedu l-piz eccessiv li kienu ser ikomplu jerfghu mat-trapass ta` kwazi 37 sena. Isegwi ghalhekk illi l-atturi rikorrenti ma jistax jigi kkunsidrat illi rrinunzja inkondizzjonatament b`mod indefinit u perpetwu ghad-dritt ta` tgawdija tal-proprjeta` taghhom, b`sagrificcju lejn l-interess generali socjali li fir-realta` tali interess m`ghadux ireggi tul il-milja taz-zmien.

(25) Illi r-rikorrenti jhossu illi fir-rigward taghhom gie miksur l-Artikolu 37 tal-Kostituzzjoni ta` Malta, kif ukoll l-Ewwel Artikolu tal-Ewwel Protocol tal-Konvenzjoni Ewropea u konsegwentement ghandu jithallas kumpens a tenur tal-Ligi (vide* ***Cassar vs Malta*** *no. 50570/13 deciza mill-Qorti Ewropea ghad-Drittijiet tal-Bniedem fit-30 ta` Jannar 2018), stante illi huma gew ipprivati, minghajr ma nghataw kumpens gust ghat-tgawdija tal-proprjeta` taghhom u cioe` tal-fond 2 gja 17 Shepherd Street, Rabat minhabba d-disposizzjonijiet tal-Artikolu 12 tal-Kap. 158 tal-Ligijiet ta` Malta, kif emendat bl-Att XXIII tal-1979.

(26) Illi huma ghandhom jircievu sia danni pekunjarji kif ukoll non pekunjarji f`ammonti sodisfacenti ghat-telf taghhom kif gie deciz fil-kawza* ***"Albert Cassar vs Malta*** *deciza mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem fit-30 ta` Jannar 2018.

(27) Illi kif gie deciz mill-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem fil-11 ta` Dicembru 2018 (Rikors nru. 22456/15) fil-kawza fl-ismijiet ***Franco Buttigieg and Others vs Malta*** *l-imsemmija Qorti kkonfermat illi l-insenjament kollu li saret referenza ghalih supra jghodd wkoll ghal dawk il-kazijiet fejn il-koncessjoni enfitewtika temporanja inghatat wara d-dhul fis-sehh tal-Att XXIII tal-1979, kif gara fil-kaz odjern, u l-istess Qorti sabet illi f`tali kaz xorta tezisti vjolazzjoni tal-Ewwel Artikolu tal-Ewwel Protokol tal-Konvenzjoni Ewropea u dan ghar-ragunijiet imsemmija fl-istess sentenza u konsegwentement ikkundannat lill-Istat Malti jhallas €22,000 bhala danni pekunjarji, €4,500 bhala danni non pekunjarji u €9,000 oltre kull taxxa pagabbli bhala spejjez legali lir-rikorrenti. Illi ai termini tas-sentenza fuq msemmija, il-Qorti Ewropea tad-Drittijiet Fundamentali tal-Bniedem iddecidiet illi f`kaz fejn ma jistax jkun hemm restitutio in integrum, ossia li l-fond jigi moghti lura battal lir-rikorrenti, id-danni minnhom sofferti ghandhom jigu kalkulati fuq id-differenza bejn dak li tkun effettivament rciviet tul iz-zmien mit-terminazzjoni tal-koncessjoni enfitewtika temporanja sal-prezentata tar-rikors odjern u dak li suppost rciviet skont ir-rata tas-suq fl-istess perijodu.*

(28) Illi b`sentenza ohra deciza mill-Qorti Ewropea ghad-Drittijiet Fundamentali tal-Bniedem fis-27 ta` Awwissu 2019, (Application no. 55747/16) fl-ismijiet ***Portanier vs Malta****, l-imsemmija Qorti ammoniet lill-Qorti Kostituzzjonali Maltija talli qieghda b`mod kontinwu u sistematika tabdika mir-responsabbilta` taghha u tonqos milli tordna l-izgumbrament tal-inkwilini f`kazijiet simili ghal dak odjern, meta fl-istess nifs ssib illi hemm lezjoni tad-drittijiet fundamentali tal-bniedem.*

(29) Illi r-rikorrenti qed jippretendu illi huma ghandhom jircievu d-danni kemm pekunjarji u kemm non-pekunjarji ai termini tal-Ligi li huma sofrew tul iz-zmien mit-terminazzjoni tal-koncessjoni enfitewtika temporanja sas-sena 2018.

Ghaldaqstant ir-rikorrrenti umilment jitolbu lil din l-Onorabbli Qorti prevja kwalsiasi dikjarazzjoni necessarja u opportuna u ghar-ragunijiet premessi jghidu l-intimati ghaliex m`ghandhiex :

(I) Tiddikjara u Tiddeciedi illi fil-konfront tar-rikorrent l-operazzjonijiet tal-Artikolu 12 partikolarment l-Artikolu 12(2) tal-Kap. 158 tal-Ligijiet ta` Malta kif emendat bl-Att XXIII tal-1979, u bl-operazzjonijiet tal-Ligijiet vigenti qeghdin jaghtu dritt ta` rilokazzjoni

lill-intimata Spira Zahra u jirrenduha impossibli lir-rikorrenti li jirriprendu l-pussess tal-proprjeta` taghhom.

(II) Konsegwentement Tiddikjara u Tiddeciedi illi qed jigu vjolati d-drittijiet tar-rikorrenti ghat-tgawdija tal-proprjeta` taghhom 10, Triq il-Karmnu, Zabbar bi vjolazzjoni tal-Artikolu 37 tal-Kostituzzjoni ta` Malta, u l-Ewwel Artikolu tal-Ewwel Protocol tal-Konvenzjoni Ewropea (l-Ewwel Skeda tal-Kap. 319 tal-Ligijiet ta` Malta) u b`hekk taghtihom ir-rimedji li jidhrilha xierqa fis-sitwazzjoni.

(III) Tiddikjara u Tiddeciedi illi l-intimat Avukat Generali huwa responsabbli ghal kumpens u danni sofferti mir-rikorrenti b`konsegwenza tal-operazzjonijiet ta`l-Att XXIII tal-1979 li ma kreawx bilanc gust bejn id-drittijiet tas-sidien u dawk tal-inkwilini, stante illi ma jirriflettux is-suq u lanqas il-valur lokatizju tal-proprjeta` in kwistjoni ai termini tal-Konvenzjoni Ewropea.

(IV) Tillikwida l-istess kumpens u danni pekunjarji u non pekunjarji kif sofferti mir-rikorrenti ai termini tal-Ligi.

(V) Tikkundanna lill-intimat Avukat Generali jhallas l-istess kumpens u danni hekk likwidati.

Bl-ispejjez, u bl-ingunzjoni tal-intimati ghas-subizzjoni.

Rat id-dokumenti li kienu prezentati mar-rikors.

Rat ir-risposta li pprezenta l-intimat Avukat Generali (illum Avukat tal-Istat) fit-<u>12 ta` Dicembru 2019</u> u li taqra hekk :-

1. Illi safejn it-talbiet huma mibnija fuq l-Artikolu 37 tal-Kostituzzjoni ta` Malta huma insostenibbli minhabba li f`dan il-kaz l-Istat ma kiseb jew ha l-ebda pussess ta` xi gid li huwa tar-rikorrenti.

2. Illi f`kull kaz it-talbiet kollha tar-rikorrenti mhumiex siewja ghaliex kemm taht il-Kostituzzjoni ta` Malta u kif ukoll taht il-Konvenzjoni Ewropea, l-Istat ghandu kull jedd li jwettaq dawk il-ligijiet

li jidhrulu xierqa biex jikkontrolla l-uzu ta` proprjetà skont l-interess generali. F`dan is-sens huwa maghruf fil-gurisprudenza li l-Istat igawdi minn diskrezzjoni wiesgha sabiex jidentifika x`inhu mehtieg fl-interess generali u sabiex jistabilixxi liema huma dawk il-mizuri mehtiega ghal harsien tal-interess generali.

3. Illi fil-fehma tal-esponent mizuri socjali implimentati biex jipprovdu dar ta` abitazzjoni lin-nies fil-bzonn jaqghu fil-kappa tal-interess generali. Taht dan il-profil l-artikoli tal-Kap 158 tal-Ligijiet ta` Malta mdahhla fis-sistema legali permezz tal-Att XXXIII tal-1979, li huma mahsuba biex jipprotegu persuni milli jigu mkeccija mid-dar tal-abitazzjoni taghhom f`gheluq it-terminu koncess lilhom fil-kuntratt tal-enfitewsi, ma jistghux jigu klassifikati li mhumiex legittimi jew mhux fl-interess generali. Ghalhekk meta wiehed iqis li l-emendi tal-1979 kienu gew introdotti bi skop li l-Gvern tal-gurnata jimplimenta l-politika tieghu socjali u ekonomika fil-qasam tal-akkomodazzjoni, l-esponent ma jarax li dawn l-artikoli ghandhom jitqiesu li jmorru kontra d-drittijiet tal-bniedem kif imharsin bil-Kostituzzjoni u l-Konvenzjoni Ewropea.

4. lli stabbilit li l-Kapitolu 158 tal-Ligijiet ta` Malta ghandu ghanijiet legittimi u huwa fl-interess generali, b`dana li ma hemm xejn hazin li l-ligi Maltija tiddisponi li f`gheluq enfitewsi temporanja l-okkupant li jkun qed juza` dik id-dar bhala r-residenza tieghu ghandu jithalla fid-dar taht titolu ta` kera, allura safejn ir-rikorrenti qeghdin jitolbu dikjarazzjoni gudizzjali li l-ligi tikser il-Kostituzzjoni ta` Malta u l-Konvenzjoni Ewropea, tali talbiet mhumiex misthoqqa.

5. Illi l-esponent ma jabqilx mar-rikorrenti li huma ma jistghux jiehdu lura l-post. Qari kontestwali tal-Artikolu 12(3) mat-tifsira ta` kerrej kif misjuba fl-Artikolu 2 tal-Kap 158 tal-Ligijiet ta` Malta, juruk li t-tigdid tal-kirja favur il-kerrej hija mizura temporanja u mhux perpetwa.

6. Illi dwar l-isproporzjon fil-kera mhallsa, l-esponent sincerament ma jhossx li l-kera li qieghda tithallas fil-prezent hija xi kera daqstant sproporzjonata. Hawnhekk wiehed ma jridx jinsa li meta jkun hemm prezenti ghanijiet legittimi mehuda fl-interess pubbliku, bhalma hawn f`dan il-kaz, il-kumpens dovut lis-sidien minhabba l-indhil fit-tgawdija ta` gidhom, jigbed lejh ammont li jkun ferm inqas mill-valur shih tas-suq.

7. Illi maghdud ma` dan, meta wiehed jigi biex ikejjel il-mizien tal-proporzjonalità wiehed irid iqis ukoll li l-protezzjoni tal-kera taht il-Kapitolu 158 tal-Ligijiet ta` Malta mhijiex perpetwa izda tispicca mal-inkwilin u kif ukoll li t-tiswijiet kollha li jolqtu l-post imissu biss lill-inkwilin u mhux lis-sid.

8. Illi ghalhekk meta wiehed jizen dan kollu, il-konkluzjoni hija li anke dan il-parti tal-ilment tar-rikorrenti dwar in-nuqqas ta` proporzjonalità mhuwiex gustifikat ghaliex ma hemm l-ebda ksur tal-ligi u b`hekk kull talba ghal rimedji mitluba minnhom mhix misthoqqa.

Ghaldaqstant fid-dawl tas-suespost l-esponent umilment jitlob lil din l-Onorabbli Qorti joghgobha tichad it-talbiet kollha tar-rikorrenti bl-ispejjez kontra taghhom.

Rat ir-risposta li pprezentat l-intimata Spira Zahra fid-19 ta` Dicembru 2019 u li taqra hekk :-

1. Illi l-esponenti qed tipprezenta risposta ghat-talbiet tar-rikorrenti sabiex tissalvagwardja l-interessi taghha fil-ligi bhala l-inkwilina tal-fond ossia 10, Triq il-Karmnu, Zabbar.

2. Illi minghajr pregudizzju ghas-suespost ir-rikorrenti ghandhom igibu prova tat-titolu li fuqu qed jibbazaw l-azzjoni odjerna.

3. Illi minghajr pregudizzju ghas-suespost Spira Zahra ma hijiex il-legittima kontradittura tat-talbiet tar-rikorrenti ghaliex certament ma jistax jigi dikjarat li hija b`xi mod qed tilledi d-drittijiet Kostituzzjonali u dawk imharsa mill-Konvenzjoni Ewropea tar-rikorrenti stante li hija ma kellha u ma ghandha ebda poter legislattiv u certament ma hemm l-ebda ness bejn il-ksur tad-drittijiet lamentat mir-rikrorrenti u l-agir tal-istess Spira Zahra.

4. Illi minghajr pregudizzju ghas-suespost ir-rimedji mitluba mir-rikorrenti ma humiex kompatibbli mal-azzjoni promossa mir-rikorrenti. Fl-azzjoni mressqa mir-rikkorrenti mkien ma hemm xi talba sabiex l-Art. 12 u 12A tal-Kap 158 tal-Ligijiet ta` Malta jigu dikjarati li ma humiex in konformita mal-Kostituzzjoni ta` Malta jew li jmorru kontra d-dispozizzjonijiet tal-Konvenzjoni Ewropea. Ghaldaqstant

wiehed ma jistax fic-cirkostanzi jilmenta minn agir li skont hu leziv tad-drittijjiet kostituzzjonali tieghu u dawk imharrsa mill-Konvenzjoni Ewropea u fl-istess nifs jirrikonoxxi li l-istess agir li jilmenta mieghu huwa in linea ma dispozizzjoni statutorja tal-Ligijiet tal-pajjiz u bl-ebda mod ma jattaka l-validita` ta` dik id-dispozizzjoni statutorja.

5. Illi minghajr pregudizzju ghas-suespost t-talbiet tar-rikorrenti huma nfondati fil-fatt u fid-dritt in kwantu fost affarijiet ohra mhux biss ir-rikorrenti ma sofrewx ksur tad-drittijiet taghhom mharsa taht l-Art. 37 tal-Kostituzzjoni ta` Malta u l-Ewwel Artikolu tal-Ewwel Protokoll tal-Kovenzjoni Ewropea (l-Ewwel Skeda tal-Kap 319 tal-Ligijiet ta` Malta) izda l-istess dispozizzjonijiet tal-ligi ma humiex applikabbli ghac-cirkostanzi tal-kaz in ezami.

6. Illi minghajr pregudizzju ghas-suespost ir-rikorrenti illum jircievu kera ghal fond mertu tal-kawza li tenut kont tac-cirkostanzi kollha tal-kaz jikkostitwixxi fair rent u ghalhekk in linea mal-gurisprudenza tal-Qrati nostrani ma jistghux jsostnu li qed jigu lezi xi drittijiet taghhom kif vantant minnhom fir-rikors promotur.

7. Illi minghajr pregudizzju ghas-suespost it-talbiet tar-rikorrenti huma nfondati fil-fatt u fid-dritt in kwantu privi minn kull fundament guridiku u fattwali kif ser jigi ppruvat fil-mori ta` dawn il-proceduri.

8. Salv eccezzjonijiet ulterjuri.

Bl-ispejjez.

Rat id-digriet li tat fl-udjenza tad-9 ta` Jannar 2020 fejn kien mahtur il-Perit Mario Cassar bhala perit tekniku sabiex jistma u jirrelata dwar il-valur lokatizzju fis-suq tal-fond 10, Triq Karmnu, Zabbar, mill-1 ta` Julju 1981 u kull hames snin sat-31 ta` Dicembru 2019.

Rat ir-relazzjoni li pprezenta l-perit tekniku, il-kontenut ta` liema relazzjoni kkonferma bil-gurament quddiemha.

Rat il-provi l-ohra li tressqu fil-kors tal-kawza, inkluza l-eskussjoni tal-perit tekniku.

Rat illi l-kawza thalliet ghas-sentenza ghal-lum bil-fakolta` li l-partijiet jipprezentaw noti ta` osservazzjonijiet.

Rat l-atti l-ohra tal-kawza.

II. Provi

1. Fatti

Philip Grima, missier ir-rikorrenti Doreen u Joseph ahwa Grima, u r-ragel tar-rikorrenti l-ohra Georgina Grima, miet fit-2 ta` Dicembru 2015. Minkejja li kien ghamel t-testment sigriet tat-18 ta` Gunju 2007, il-wirt tieghu ghadda *ab intestato* favur ir-rikorrenti.

B`kuntratt tal-11 ta` Mejju 1964 fl-atti tan-Nutar Dottor Joseph Felix Abela, Philip Grima ikkonceda lil Antonio Bugeja l-mezzanin 10, Triq il-Karmnu, Zabbar, b`titolu ta` subcens temporanju ghal zmien 17-il sena dekorribbli mill-1 ta` Lulju 1964 versu l-hlas ta` Lm 32 fis-sena pagabbli kull tlett xhur bil-quddiem.

Fl-1976, Antonio Bugeja ghadda s-subcens li kien fadal tal-fond de quo lil Carmel Zahra, ir-ragel tal-intimata Spira Zahra, illum mejjet.

Is-subcens ghalaq fit-30 ta` Gunju 1981.

L-intimata Zahra baqghet tokkupa l-post b`titolu ta` kera skont bis-sahha tad-disposizzjonijiet tal-Att XXIII tal-1979. Ghadha hemm sal-lum.

Qeghda tithallas kera ta` €220 fis-sena.

Ir-rikorrenti baqghu jaccettaw il-kera sal-2018. Peress li l-kera bdiet tigi rifjutata, il-kera bdiet tigi depozitata taht l-awtorita` tal-Qorti.

Il-fond mhuwiex dekontrollat[1].

2. **Ir-relazzjoni tal-perit tekniku**

Kien **kostatat** mill-perit tekniku illi :-

a) Il-fond in kwistjoni huwa mezzanin, jinsab f`kantuniera u jissovrasta pastizzeria.

b) Il-fond ghandu daqs ta` madwar 90 m.k. u jinsab fi stat tajjeb ta` manutensjoni.

c) Ghandu valur fis-suq, jekk liberu u frank, ta` **€144,000**.

d) Fl-1981 il-valur lokatizju tal-fond kien ta` **€318** fis-sena.

e) Fl-2019 il-valur lokatizju tal-fond kien ta` **€5,040** fis-sena.

3. **L-eskussjoni**

Il-perit tekniku wiegeb ghal domandi **in eskussjoni**.

Xehed illi l-arja tal-fond tista` tigi zviluppata ghal massimu ta` tlett sulari *basement*. Il-valur lokatizju tal-post kien determinat abbazi tal-binja ezistenti, mhux fuq zvilupp potenzjali.

4. **Il-piz probatorju tar-relazzjoni teknika**

[1] Ara c-certifikat datat 14 ta` Novembru 2019 a fol. 12 tal-process.

Fis-sentenza taghha tad-19 ta` Novembru 2001 fil-kawza **"Calleja vs Mifsud"**, il-Qorti tal-Appell qalet hekk -

***Kemm il-kostatazzjonijiet tal-perit tekniku nominat mill-Qorti kif ukoll il-konsiderazzjonijiet u opinjonijiet esperti tieghu jikkostitwixxu skond il-ligi prova ta` fatt li kellhom bhala tali jigu meqjusa mill-Qorti.*** *Il-Qorti ma kenitx obbligata li taccetta r-rapport tekniku bhala prova determinanti u kellha dritt li tiskartah kif setghet tiskarta kull prova ohra. Mill-banda l-ohra pero` huwa ritenut minn dawn il-Qrati li kellu jinghata piz debitu lill-fehma teknika tal-espert nominat mill-Qorti billi l-Qorti ma kellhiex leggerment tinjora dik il-prova. Hu manifest …. illi l-mertu tal-prezenti istanza kien kollu kemm hu wiehed ta` natura teknika li ma setax jigi epurat u deciz mill-Qorti minghajr l-assistenza ta` espert in materja. B`danakollu dan ma jfissirx illi l-Qorti ma kellhiex thares b`lenti kritika lejn l-opinjoni teknika lilha sottomessa u ma kellhiex tezita li tiskarta dik l-opinjoni jekk din ma tkunx wahda sodisfacentement u adegwatament tinvesti l-mertu, jew jekk il-konkluzjoni ma kenitx sewwa tirrizolvi l-kwezit ta` natura teknika.* (enfasi u sottolinear ta` din il-qorti)

Ghalkemm qorti mhix marbuta li taccetta l-konkluzjonijiet ta` perit tekniku kontra l-konvinzjoni taghha (*dictum expertorum numquam transit in rem judicata*), fl-istess waqt dak *ma jfissirx pero` illi qorti dan tista` taghmlu b` mod legger jew kapriccjuz. Il-konvinzjoni kuntrarja taghha kellha tkun ben informata u bazata fuq ragunijiet li gravament ipoggu fid-dubju dik l-opinjoni teknika lilha sottomessa b` ragunijiet li ma ghandhomx ikunu privi mill-konsiderazzjoni tal-aspett tekniku tal-materja taht ezami* (**"Grima vs Mamo et noe" –** Qorti tal-Appell – 29 ta` Mejju 1998)**.**

Jigifieri qorti ma tistax tinjora r-relazzjoni peritali sakemm ma tkunx konvinta li l-konkluzjoni ta` tali relazzjoni ma kienetx gusta u korretta. Din il-konvinzjoni pero` kellha tkun wahda motivata minn gudizzju ben informat, anke fejn mehtieg mil-lat tekniku. (**"Cauchi vs Mercieca" –** Qorti tal-Appell – 6 ta` Ottubru 1999 **; "Saliba vs Farrugia"** – Qorti tal-Appell – 28 ta` Jannar 2000 u "**Calleja *noe* vs Mifsud**" – Qorti tal-Appell – 19 ta` Novembru 2001).

Il-*giudizio dell`arte espress mill-perit tekniku ma jistax u ma ghandux, aktar u aktar fejn il-parti nteressata ma tkunx ipprevaliet ruhha mill-fakolta` lilha moghtija ta` talba ghan-nomina ta` periti addizzjonali, jigi skartat facilment, ammenokke` ma jkunx jidher*

sodisfacentement illi l-konkluzjonijiet peritali huma, fil-kumpless kollha tac-cirkostanzi, irragonevoli" – ("**<u>Bugeja et vs Muscat et</u>" –** Qorti tal-Appell – 23 ta` Gunju 1967).

Fil-kaz tal-lum, jirrizulta bhala fatt li, wara li kienet prezentata u mahlufa r-relazzjoni tal-perit tekniku, il-partijiet ma ressqux talba ghall-hatra ta` periti addizzjonali izda llimitaw ruhhom ghall-eskussjoni tal-perit tekniku.

Wara li rat ir-relazzjoni, u wara li qieset dak li wiegeb il-perit tekniku, il-Qorti sejra taghmel taghha l-kostatazzjonijiet u l-konkluzjonijiet tal-perit tekniku, u sejra tqishom bhala <u>prova ta` fatt</u> flimkien mal-provi l-ohra.

III. <u>L-ewwel (1) eccezzjoni tal-intimata Zahra</u>

L-intimata Zahra eccepiet illi r-rikorrenti kellhom jaghmlu l-prova tat-titolu ghall-proprjeta` de qua.

Il-gurisprudenza kostanti tal-qrati taghna hija fis-sens illi fil-kawzi ta` indole kostituzzjonali mhuwiex **<u>indispensabbli</u>** illi r-rikorrent jipprova t-titolu tieghu ghall-proprjeta` ghaliex kawzi bhal din tal-lum mhumiex kawzi ta` rivendika fejn il-prova tat-titolu hija *sine qua non* sabiex tirnexxi l-azzjoni.

Fis-sentenza li tat fis-7 ta` Frar 2017 fil-kawza **<u>Robert Galea vs Avukat Generali et</u>** din il-Qorti diversament presjeduta qalet hekk :-

> *"Illi biex wiehed ikun f`qaghda li juri li garrab ksur tal-jedd fondamentali tieghu taht l-artikolu 37 tal-Kostituzzjoni m`ghandux ghalfejn jipprova titolu assolut u lanqas wiehed originali bhallikieku l-azzjoni dwar ksur ta` jedd fondamentali kienet wahda ta` rivendika (Kost. 27.3.2015 fil-kawza fl-ismijiet **<u>Ian Peter Ellis et vs Avukat Generali et</u>**). Huwa bizzejjed, ghall-finijiet ta` dak l-artikolu, li wiehed juri li ghandu jedd fil-haga li tkun li bih jista` jieqaf ghall-pretensjonijiet ta` haddiehor.*

Imbaghad, ghall-finijiet tal-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, huwa bizzejjed li l-persuna turi li kellha l-pussess tal-haga li tkun."

Dan premess, il-Qorti tosserva illi <u>bhala fatt</u> ir-rikorrenti ghamlu l-prova tat-titolu.

Il-provi dwar it-titolu ghall-fond de quo jirrizultaw mid-dokumenti li pprezentaw ir-rikorrenti mar-rikors promotur.

Il-provi tar-rikorrenti ma kienux kontestati jew kontradetti.

Wara li rat l-atti, il-qorti tqis illi r-rikorrenti jgawdu minn titolu validu, u ghalhekk ghandhom dritt jippretendu mhux biss li jgawdu l-jeddijiet taghhom, izda wkoll li jitolbu l-harsien ta` dawk id-drittijiet.

Billi tinsab sodisfatta li r-rikorrenti ghandhom titolu tajjeb sabiex jipproponu l-kawza odjerna, qeghda tastjeni milli tiehu konjizzjoni ulterjuri tal-ewwel (1) eccezzjoni tal-intimata Zahra.

IV. <u>It-tieni (2) eccezzjoni tal-intimata Zahra</u>

L-intimata Zahra eccepiet li mhijiex il-legittima kontradittrici tar-rikorrenti, billi huwa biss l-Istat illi jista` jikkommetti vjolazzjoni ta` drittijiet fondamentali.

Huwa accettat fil-gurisprudenza taghna illi f`kawzi ta` indole kostituzzjonali u/jew konvenzjonali huwa l-Istat illi ghandu jwiegeb ghall-vjolazzjoni ta` drittijiet fondamentali billi huwa l-Istat illi ghandu l-obbligu illi jassigura illi l-ligijiet ma joholqux zbilanc ngust bejn id-drittijiet tal-persuna u l-obbligi tal-Istat.

Fil-kawza tal-lum, ir-rikorrenti qeghdin jilmentaw mill-fatt illi d-disposizzjonijiet tal-Kap 158 qeghdin joholqu relazzjoni forzuza ghad-detriment taghhom vis-à-vis l-intimata Zahra bhala inkwilina.

Ghalhekk qeghdin jitolbu dikjarazzjoni illi d-disposizzjonijiet tal-Kap 158, partikolarment l-Art 12(2), li dahlu effett tal-Att XXIII tal-1979 jiksru l-jeddijiet fondamentali taghhom ta` proprjeta` kif dawn huma mharsa bl-Art 37 tal-Kostituzzjoni ta` Malta ("**il-Kostituzzjoni**") u bl-Art 1 Prot 1 tal-Konvenzjoni Ewropea ghall-Protezzjoni tad-Drittijiet tal-Bniedem u Libertajiet Fondamentali ("**il-Konvenzjoni**").

Fis-sentenza li tat fis-7 ta` Dicembru 1990 fil-kawza fl-ismijiet **Joseph Abela v. Onor. Prim` Ministru et**, il-Qorti Kostituzzjonali qalet hekk :-

"F`kawzi ta` natura kostituzzjonali bbazati fuq id-drittijiet fundamentali, il-legittimi kontraditturi ta` dawk l-azzjonijiet jinqasmu fi tliet kategoriji. L-ewwel kategorija tikkomprendi dak li huwa allegat li huma, direttament jew indirittament, responsabbli ghall-kummissjoni jew omissjoni ta` xi fatt li jikser xi dritt fundamentali protett mil-ligi. Fit-tieni kategorija huma dawk li ghall-omissjonijiet jew kummissjonijiet talpersuni tal-ewwel kategorija jistghu jkunu responsabbli biex jaghtu jew jiffornixxu r-rimedji li s-sentenza, li takkolji llament tal-ksur ta` dritt fundamentali, tissanzjona. It-tielet kategorija mbaghad hemm dawk il-partijiet kollha li jkunu in kawza meta l-kwistjoni kostituzzjonali tinqala` fuq jew waqt xi procedura gudizzjarja.

Dawn it-tliet kategoriji ta` persuni huma kollha legittimi kontradditturi fi proceduri ta` natura kostituzzjonali, li f`dan ir-rigward ukoll hija specjali, ghaliex biex zgumbrament ikunu kompiti u effikaci jirrikjedu l-prezenza ta` persuni li normalment fi procedure ordinarji jithallew barra, ghaliex minghajrhom il-gudizzju xorta wahda huwa integru. F`azzjoni ta` natura kostituzzjonali wkoll, il-gudizzju jkunu integru, jekk

il-persuni tat-tieni kategorija jithallew barra mill-kawza, ghalkemm jista` jkun li l-azzjoni tirrizulta ineffikaci."

L-Avukat tal-Istat (qabel l-Avukat Generali) huwa r-rapprezentant tal-Istat. Jekk ir-rikorrenti jsehhilhom jipprovaw l-allegat ksur tad-drittijiet fondamentali taghhom, u bhala rimedju jinghataw kumpens (sew jekk pekunarju sew jekk ikun morali) huwa l-Istat illi ghandu jaghmel tajjeb ghall-hlas tal-kumpens.

Il-lezjoni lamentata mir-rikorrenti fil-kawza odjerna mhijiex diretta kontra l-intimata Zahra. Kienet imharrka l-intimata Zahra ghaliex ghandha **interess** fil-kawza, billi provvediment li ***tista`*** taghti l-qorti ***jista`*** jolqot lilha **direttament**, bhall-okkupazzjoni futura taghha tal-fond de quo fejn tirrisjedi. Proceduri tax-xorta tal-lum jinvolvu zewg aspetti : i) ir-responsabbilita` ghall-vjolazzjoni ; u ii) l-persuna li trid twiegeb. Dawn iz-zewg aspetti mhux necessarjament ikunu konnessi ghaliex waqt li l-vjolazzjoni tista` tkun twettqet mill-Istat, ir-rimedju jista` jolqot persuna li ma tkunx l-Istat. Ghalhekk mhux biss l-Istat ghandu jigi mharrek tramite r-rapprezentant legittimu tieghu, izda kull persuna li ghandha interess.

Fis-sentenza li tat fit-22 ta` Frar 2013 fil-kawza fl-ismijiet **Raymond Cassar Torreggiani et. vs AG et**, il-Qorti Kostituzzjonali ghamlet din l-osservazzjoni :-

*" … **biex gudizzju jkun integru jehtieg li, ghall-ahjar gudizzju tal-Qorti, jippartecipaw fih dawk kollha li huma nteressati fil-kawza**. B`hekk tigi assigurata kemm jista` jkun l-effikacita` tal-gudizzju inkwantu dan jorbot biss lil dawk li jkunu partecipi fih, kif ukoll jigi rispettat il-principju tal-ekonomija tal-gudizzju sabiex ma jkunx hemm bzonn ta` ripetizzjoni ta` proceduri kontra l-persuni kollha interessati fid-diversi kawzi billi dawn ma jkunux hadu parti f`gudizzju wiehed. Il-gudizzju jibqa` integru mill-mument li jiehdu parti fih dawk li jkollhom id-dritt, u dawk li kontra taghhom dak l-istess dritt jikkompeti". (enfasi mizjuda)*

…

Mill-premess ghandu jirrizulta car li l-intimati konjugi Tabone, bhala inkwilini tal-fond de quo, u tenut kont tal-fatt li proprju l-inkwilinat taghhom jifforma l-mertu tal-kawza odjerna, ghandhom interess guridiku u ghalhekk ikunu partecipi fil-kawza li jista` jkollha effetti legali anke fuqhom."

Issir referenza wkoll ghal dak illi nghad fis-sentenza li tat il-Qorti Kostituzzjonali fis-6 ta` Frar 2015 fil-kawza fl-ismijiet **Sam Bradshaw et vs l-Avukat Generali et** :-

"20. Din il-Qorti tosserva li, ghalkemm taqbel mat-tezi li, ladarba l-kazin agixxa skont il-ligi, allura m`ghandux legalment jirrispondi ghall-inkostituzzjonalita` tal-ligi applikata minnu jew jehel spejjez tal-kawza, izda mill-banda l-ohra, il-proceduri odjerni necessarjament jaffettwaw lill-kazin stante li dan hu parti fir-rapport guridiku li huwa regolat b`ligi li l-kostituzzjonalita` taghha qed tigi attakkata. Ghaldaqstant il-prezenza tieghu f`dawn il-proceduri hija necessarja ghall-finijiet tal-integreta` tal-gudizzju. Il-kazin bhala inkwilin tal-fond ghandu interess guridiku f`din il-kawza peress li l-meritu jikkoncerna lilu direttament. Ghal din ir-raguni huwa ghandu jkun partecipi fil-gudizzju u ghalhekk huma legittimi kuntraditturi. Ghaldaqstant lewwel Qorti kienet korretta meta laqghet it-talba ghas-sejha fil-kawza tal-kazin intimat."

It-tieni (2) eccezzjoni tal-intimata Zahra qeghda tkun respinta.

V. It-talbiet u l-eccezzjonijiet tal-intimati fil-mertu

1. L-ewwel (1) talba

Fl-ewwel talba, il-qorti qeghda tintalab illi tiddikjara u tiddeciedi li l-applikazzjoni fil-konfront tar-rikorrenti tal-Art 12 tal-Kap 158, partikolarment tas-subartikolu (2), kif emendat bl-Att XXIII tal-1979, l-intimata Zahra qeghda tinghata dritt ta` rilokazzjoni li taghmilha mpossibli li r-rikorrenti li jirriprendu l-pussess tal-proprjeta` taghhom.

Il-qorti taghmel referenza ghas-sentenza li tat il-Qorti Kostituzzjonali fis-27 ta` Marzu 2020 fil-kawza fl-ismijiet **Matthew Said et v. Arthur Vella et** fejn ippronunzjat ruhha dwar talba identika. F`dik il-kawza, l-appell kien interpost mill-intimati Vella. It-tielet aggravju taghhom kien dwar id-dikjarazzjoni li ghamlet l-Ewwel Qorti : "illi l-art. 12 tal-Kap. 158 jaghmilha impossibbli ghall-atturi li jiehdu lura l-pussess tal-propjeta` taghhom."

Il-Qorti Kostituzzjonali ghamlet dawn l-osservazzjonijiet :-

17. Huwa minnu illi, ukoll taht l-art. 12 tal-Kap. 158, u bla ma tqis ukoll l-art. 12B, ma kienx ghal kollox "impossibbli" li s-sid jiehu lura l-propjeta`, ghalkemm x`aktarx difficli u kien hemm incertezza dwar meta. Ghalhekk kien ikun ahjar li kieku, flok esprimiet ruhha f`termini assoluti ta` impossibilita`, l-ewwel qorti esprimiet ruhha f`termini aktar relativi.

18. Ghalhekk l-aggravju sejjer jintlaqa` fis-sens illi l-parti tassentenza fejn jinghad "li jaghmilha impossibbli ghar-rikorrenti li jirriprendu pussess tal-propjeta` taghhom" tinbidel hekk : "li jaghmilha difficli u haga x`aktarx incerta ghall-atturi li jiehdu lura lpussess tal-propjeta` taghhom.

19. … il-konsiderazzjonijiet li ghamlet u r-rimedju li tat l-ewwel qorti kienu relativi ghaz-zmien u ghall-posizzjoni legali qabel ma dahlu fis-sehh l-emendi maghmula bl-Att XXVII tal-2018 u ghalhekk ma jolqtux il-jeddijiet tal-partijiet taht dawk l-emendi. Fil-fatt it-talbiet tal-atturi kienu dwar l-effett tal-art. 12 tal-Kap. 158 fuq id-drittijiet taghhom u mhux dwar l-effett tal-art. 12B li ddahhal fil-Kap. 158 blart. 4 tal-Att XXVII tal-2018, u ghalhekk id-drittijiet li jista` jkollhom il-partijiet taht l-art. 12B ma jintlaqtux bid-dikjarazzjoni tal-ewwel qorti.

Din il-qorti taghmel taghha dan il-pronunzjament.

Ghalhekk sejra tipprovdi dwar l-ewwel talba kif dedotta billi tiddikjara u tiddeciedi illi fil-konfront tar-rikorrenti l-operazzjonijiet tal-Artikolu 12, partikolarment l-Artikolu 12(2) tal-Kap. 158 tal-Ligijiet ta` Malta, kif emendat bl-Att XXIII tal-1979, u bl-operazzjonijiet tal-ligijiet vigenti, qeghdin jaghtu dritt ta` rilokazzjoni lill-intimata Spira Zahra li jaghmilha difficli u haga x`aktarx incerta ghar-rikorrenti li jiehdu lura l-pussess tal-propjeta` taghhom.

2. <u>It-tieni talba</u>

Ir-rikorrenti qeghdin jitolbu dikjarazzjoni u decizjoni mill-qorti li fir-rigward tal-fond 10, Triq il-Karmnu, Zabbar, huma garrbu vjolazzjoni tal-jedd fondamentali taghhom ghat-tgawdija tal-propjeta` hekk kif dak il-jedd huwa mhares bl-Art 37 tal-Kostituzzjoni u bl-Art 1 Prot 1 tal-Konvenzjoni, u b`hekk talbu li jinghataw rimedji xierqa.

a) <u>L-Art 37 tal-Kostituzzjoni</u>

Safejn it-tieni talba tirreferi ghal allegata vjolazzjoni tal-Art 37 tal-Kostituzzjoni, kien eccepit miz-zewg intimati li din id-disposizzjoni mhijiex applikabbli ghall-kaz tar-rikorrenti.

Issir referenza ghas-**<u>subartikolu (1) tal-Art 37 tal-Kostituzzjoni</u>** li jghid :-

Ebda proprjetà ta` kull xorta li tkun ma ghandu jittiehed pussess taghha b`mod obbligatorju, u ebda nteress fi jew dritt fuq proprjetà ta` kull xorta li tkun ma ghandu jigi miksub b`mod obbligatorju, hlief meta hemm disposizzjoni ta` ligi applikabbli ghal dak it-tehid ta` pussess jew akkwist –

(a) ghall-hlas ta` kumpens xieraq ;

(b) li tizgura lil kull persuna li tippretendi dak il-kumpens dritt ta` access lil Qorti jew tribunal indipendenti u imparzjali mwaqqaf b`ligi sabiex jigi deciz l-interess taghha fi jew dritt fuq il-proprjetà u l-ammont ta` kull kumpens li

ghalih tista` tkun intitolata, u sabiex tikseb hlas ta` dak il-kumpens ; u

(c) li tizgura lil kull parti fi proceduri f`dik il-Qorti jew tribunal dwar pretensjoni bhal dik dritt ta` appell mid-decizjoni taghha lill-Qorti tal-Appell f`Malta :

Izda f`kazijiet specjali l-Parlament jista`, jekk hekk jidhirlu xieraq li jaghmel fl-interess nazzjonali, b`ligi jistabbilixxi l-kriterji li ghandhom jitharsu, maghduda l-fatturi u c-cirkostanzi l-ohra li ghandhom jitqiesu, biex jigi stabbilit il-kumpens li ghandu jithallas dwar proprjetà li jittiehed pussess taghha jew li tigi akkwistata b`mod obbligatorju; u f`kull kaz bhal dak il-kumpens ghandu jigi iffissat u ghandu jithallas skont hekk.

i. <u>Gurisprudenza anqas ricenti</u>

Bosta kienu fl-ghadd id-drabi fejn il-qrati taghna qiesu jekk limitazzjoni fit-tgawdija ta` proprjeta` tistax tigi ekwiparata ma` tehid forzuz kif kontemplat bl-Art 37 tal-Kostituzzjoni. Il-linja traccjata fid-decizjonijiet tal-Qorti Kostituzzjonali li huma anqas ricenti fiz-zmien (fosthom : **<u>Josephine Bugeja vs Avukat Generali et</u>** tas-7 ta` Dicembru 2009, **<u>Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et</u>** tas-7 ta` Dicembru 2012, **<u>Mary Anne Busuttil vs Tabib John Cassar et</u>** tal-31 ta` Ottubru 2014) kienet illi bl-applikazzjoni tal-emendi ghall-Kap 158 li saru bl-Att XXIII tal-1958 il-proprjeta` baqghet tas-sid u kwindi ma kienx hemm tehid forzuz li jaghti dritt ghal kumpens ghaliex dak li sehh kien kontroll fl-uzu tal-proprjeta` li mhuwiex tehid forzuz. Izda kif inghad fis-sentenza li tat il-Qorti Kostituzzjonali fid-29 ta` Marzu 2019 fil-kawza fl-ismijiet **<u>Rebecca Hyzler et vs Avukat Generali et</u>**, *`illum il-gurisprudenza turi li l-qrati ma baqghux tal-istess hsieb`.*

ii. <u>Gurisprudenza aktar ricenti</u>

Il-gurisprudenza aktar ricenti jidher illi hadet xejra diversa.

Fid-decizjoni li nghatat fid-**<u>29 ta` Novembru 2018</u>** fil-kawza fl-ismijiet **<u>Brian Psaila v. Avukat Generali et</u>**, din il-qorti diversament sabet ksur tal-Art 37 tal-Kostituzzjoni, u cahdet eccezzjoni li kienet

inghatat mill-Avukat Generali li bl-emendi ghall-Kap 158 li dahlu bl-Att XXIII tal-1979 ma kienx hemm tehid forzuz ta` proprjeta` izda kontroll tal-uzu fl-interess pubbliku.

Saru zewg appelli minn din id-decizjoni. Il-qorti sejra tillimita ruhha ghall-appell tal-Avukat tal-Istat li ntant ha post l-Avukat Generali bhala legittimu kontradittur f`kawzi ta` din ix-xorta. In partikolari qeghda tirreferi ghall-aggravju li kien jirrigwarda l-Art 37 tal-Kostituzzjoni.

Fis-sentenza li tat fis-**<u>27 ta` Marzu 2020</u>** il-Qorti Kostituzzjonali qalet hekk :-

11. Fl-ewwel aggravju tal-appell tieghu l-Avukat tal-Istat jghid illi, peress li kien hemm biss kontroll ta` uzu tal-proprjetà tal-attur u ma kien hemm ebda "tehid forzuz ta` proprjetà", u s-sid ma giex "zvestit minn kull dritt li ghandu fuq dik il-proprjetà", il-kaz ma jintlaqatx bl-art. 37 tal-Kostituzzjoni.

12. Dan l-aggravju huwa manifestament hazin.

13. L-artikolu 37 tal-Kostituzzjoni ma jghidx biss li ma tista` tittiehed ebda proprjetà minghajr il-hlas ta` kumpens xieraq, izda wkoll illi "ebda interess fi jew dritt fuq proprjetà" ma jista` jittiehed minghajr dak il-kumpens. Fic-cirkostanzi tal-kaz tallum huwa car illi lill-attur, bis-sahha tal-ligi impunjata, ittehidlu l-jedd li jkollu l-pussess battall tal-fond, li certament huwa "interess" fil- proprjetà u dritt fuqha.

14. Dan l-ewwel aggravju tal-Avukat tal-Istat huwa ghalhekk michud.

Fuq l-istess linja kienu s-sentenzi li tat il-Qorti Kostituzzjonali fil-kawzi fl-ismijiet : <u>Estelle Azzopardi et vs Mikelina Said et</u> tal-14 ta` Dicembru 2018 ; <u>Gabriella Mangion et v. Avukat Generali et</u> tal-31 ta` Jannar 2019 ; <u>Rebecca Hyzler et vs Avukat Generali et (op. cit.)</u> ; <u>Alfred Testa pro et noe et v. Avukat Generali et</u> tal-31 ta` Mejju 2019 ; u <u>Josephine Azzopardi pro et noe et v. l-Onor. Prim Ministru et</u> tad-29 ta` Novembru 2019.

Il-qorti sejra tadotta l-gurisprudenza l-aktar ricenti.

Qeghda <u>tichad</u> l-eccezzjonijiet tal-intimati fejn kienet eccepita l-inapplikabbilita`tal-Art 37 tal-Kostituzzjoni fir-rigward tat-tieni talba tar-rikorrenti.

b) <u>L-Art 1 Prot 1 tal-Konvenzjoni</u>

Safejn it-tieni talba tirreferi ghall-allegata vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni, l-eccezzjonijiet <u>fil-mertu</u> tal-intimati huma diretti sabiex jikkontestaw il-pretensjoni tar-rikorrenti.

Id-disposizzjoni tipprovdi illi :-

Kull persuna naturali jew persuna morali ghandha d-dritt ghat-tgawdija pacifika tal-possedimenti taghha.

Hadd ma ghandu jigi pprivat mill-possedimenti tieghu hlief fl-interess pubbliku u bla hsara tal-kundizzjonijiet provduti bil-ligi u bil-principji generali tal-ligi internazzjonali.

Izda d-disposizzjonijiet ta` qabel ma ghandhom b`ebda mod inaqqsu d-dritt ta` Stat li jwettaq dawk il-ligijiet li jidhrulu xierqa biex jikkontrolla l-uzu tal-proprjeta skond l-interess generali jew biex jizgura l-hlas ta` taxxi jew kontribuzzjonijiet ohra jew pieni.

Il-qorti taghmel referenza ghad-decizjoni moghtija mill-Grand Chamber tal-ECtHR fil-5 ta` Jannar 2000 fil-kaz **<u>Beyeler vs Italy</u>** fejn inghad hekk :-

"98. As the Court has stated on a number of occasions, Article 1 of Protocol No. 1 comprises three distinct rules: "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of

*possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest ... The three rules are not, however, `distinct` in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule" (see, among other authorities, the **James and Others v. the United Kingdom** judgment of 21 February 1986, Series A no. 98, pp. 29-30, § 37, which reproduces in part the analysis given by the Court in its **Sporrong and Lönnroth v. Sweden** judgment of 23 September 1982, Series A no. 52, p. 24, § 61; see also the **Holy Monasteries v. Greece** judgment of 9 December 1994, Series A no. 301-A, p. 31, § 56, and **Iatridis v. Greece** [GC], no. 31107/96, § 55, ECHR 1999-II)."*

L-Art 1 Prot 1 huwa gwidat minn tliet principji :-

a) Illi kull persuna, sew dik naturali kif ukoll dik morali, ghandha dritt ghat-tgawdija tal-proprjeta` b`mod pacifiku ;

b) Illi tnaqqis fit-tgawdija tal-proprjeta` jista` jkun biss gustifikat jekk jintwera li jkun sar fl-interess pubbliku. Ghalhekk id-dritt mhuwiex assolut u huwa soggett ghall-kundizzjonijiet mahsuba fil-ligi u ghall-principji tad-dritt internazzjonali. Min ikun imcahhad, huwa ntitolat ghal kumpens xieraq ;

c) Illi jibqa` d-dritt tal-Istat illi jghaddi ligijiet sabiex *inter alia* b`mod xieraq jikkontrolla l-uzu tal-gid fl-interess pubbliku, bhal meta jintroduci legislazzjoni ntiza sabiex ittaffi problemi ta` akkomodazzjoni.

Dak li ried jikseb il-legislatur bl-Att XXIII tal-1979 kien kontroll tal-uzu tal-proprjeta`.

Huwa pacifiku li l-Istat ghandu margini ta` apprezzament wesghin meta jigi biex jintroduci legislazzjoni li tkun intiza sabiex fl-interess pubbliku tindirizza problemi fil-qasam tal-akkomodazzjoni ghall-fini residenzjali.

Dan premess, l-interferenza mill-Istat trid tkun (i) legali, (ii) motivata b`ghan legittimu fl-interess generali, u (iii) tohloq bilanc gust.

Jehtieg li jinzamm proporzjon ragjonevoli bejn il-mezzi u l-ghan persegwiti mill-Istat sabiex jikkontrolla l-uzu tal-proprjeta`. Ir-*raison d`etre* tal-proporzjonalita` huwa l-"*bilanc xieraq*" li ghandu jinzamm bejn l-esigenzi tal-interess generali u l-htiega tal-harsien tad-drittijiet fondamentali tal-persuna.

Il-qrati huma msejha sabiex jaghmlu analizi komprensiva tal-interessi tal-partijiet kollha sabiex ikun accertat li konsegwenza tal-indhil tal-Istat il-persuna ma titghabbiex b`piz eccessiv u sproporzjonat.

i) <u>Gurisprudenza tal-ECtHR</u>

Fil-kaz ta` **<u>Spadea and Scalabino vs Italy</u>** deciz fit-28 ta` Settembru 1995 kien osservat :-

"The second paragraph reserves to States the right to enact such laws as they deem necessary to control the use of property in accordance with the general interest.

…

Such laws are especially common in the field of housing, which in our modern societies, is a central concern of social and economic policies.

…

In order to implement such policies, the legislature must have a wide margin of appreciation.

…

The Court will respect the legislature`s judgment as to what is in the general interest unless that judgment is manifestly without reasonable foundation.

…

an interference must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights.

…

There must be a reasonable relationship of proportionality between the means employed and the aim pursued."

Fil-kaz ta` **Amato Gauci vs Malta** li kien deciz fil-15 ta` Settembru 2009, l-ECtHR qalet :-

"56. Any interference with property must also satisfy the requirement of proportionality. As the Court has repeatedly stated, a fair balance must be struck between the demands of the general interest of the community and the requirements of the protection of the individual`s fundamental rights, the search for such a fair balance being inherent in the whole of the Convention. The requisite balance will not be struck where the person concerned bears an individual and excessive burden (see ***Sporrong and Lönnroth*** *cited above, §§ 69-74, and* ***Brumărescu v. Romania*** *[GC], no. 28342/95, § 78, ECHR 1999-VII).*

57. The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 as a whole. In each case involving an alleged violation of that Article the Court must therefore ascertain whether by reason of the State`s interference the person concerned had to bear a disproportionate and excessive burden (see ***James and Others****, cited above, § 50;* ***Mellacher and Others****, cited above, § 48, and* ***Spadea and Scalabrino v. Italy****, judgment of 28 September 1995, § 33, Series A no. 315-B).*

58. In assessing compliance with Article 1 of Protocol No. 1, the Court must make an overall examination of the various interests in issue, bearing in mind that the Convention is intended to safeguard rights that are "practical and effective". It must look behind appearances and investigate the realities of the situation complained of. In cases concerning the operation of wide-ranging housing legislation, that assessment may involve not only the conditions of the rent received by

individual landlords and the extent of the State`s interference with freedom of contract and contractual relations in the lease market, but also the existence of procedural and other safeguards ensuring that the operation of the system and its impact on a landlord`s property rights are neither arbitrary nor unforeseeable. Uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State`s conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, and in an appropriate and consistent manner (see ***Immobiliare Saffi v. Italy****, [GC], no. 22774/93, § 54, ECHR 1999-V; and Broniowski, cited above, § 151).*

59. Moreover, in situations where the operation of the rent-control legislation involves wide-reaching consequences for numerous individuals and has economic and social consequences for the country as a whole, the authorities must have considerable discretion not only in choosing the form and decidingon the extent of control over the use of property but also in deciding on the appropriate timing for the enforcement of the relevant laws. Nevertheless, that discretion, however considerable, is not unlimited and its exercise cannot entail consequences at variance with the Convention standards (see, mutatis mutandis, ***Hutten-Czapska****, cited above, § 223)."*

…

"In the present case, having regard to the low rental value which could be fixed by the Rent Regulation Board, the applicant`s state of uncertainty as towhether he would ever recover his property, which has already been subject to this regime for nine years, the lack of procedural safeguards in the application of the law and the rise in the standard of living in Malta over the past decades, the Court finds that a disproportionate and excessive burden was imposed on the applicant. The latter was requested to bear most of the social and financial costs of supplying housing accommodation to Mr and Mrs P. (see, mutatis mutandis, ***Hutten-Czapska****, cited above, § 225). It follows that the Maltese State failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant`s right of property."*

Il-qorti sabet vjolazzjoni ta` Art 1 Prot 1 tal-Konvenzjoni.

Fid-decizjoni taghha tat-22 ta` Novembru 2011 fil-kaz ta` **Saliba et v. Malta**, l-ECtHR irrimarkat :-

> *" … the rise in the standard of living in Malta over these decades and the diminished need to secure social housing compared to the post-war era........it is clear that what might have been justified years ago, will not necessarily be justified today (see* ***Amato Gauci****, cited above, 60)."*

(ara wkoll : **Zammit & Attard Cassar vs Malta** li kien deciz mill-ECtHR fit-30 ta` Lulju 2015 ; u **Cassar vs Malta** li kien deciz mill-ECtHR fit-30 ta` Jannar 2018).

Fid-decizjoni li tat l-ECtHR fil-11 ta` Dicembru 2018 fil-kaz ta` **Buttigieg and others vs Malta** inghad :-

> *"41. The Court notes that it has found in plurality of cases against Malta concerning the same subject matter that, despite the considerable discretion of the State in choosing the form and deciding on the extent of control over the use of property in such cases, having regard to the low rental value which could have or was received by the applicants, their state of uncertainty as to whether they would ever recover the property (despite more recent amendments), the lack of procedural safeguards in the application of the law and the rise in the standard of living in Malta over the past decades, a disproportionate and excessive burden was imposed on the applicants who were made to bear most of the social and financial costs of supplying housing accommodation (see Amato Gauci, cited above, § 63; Anthony Aquilina v. Malta, no. 3851/12, § 67, 11 December 2014; and Cassar v. Malta, no. 50570/13, § 61, 30 January 2018). In those cases the Court found that the Maltese State had failed to strike the requisite fair balance between the general interests of the community and the protection of the applicant`s right of property and that there had thus been a violation of Article 1 of Protocol No.1 to the Convention.*

42. Having regard to the facts of the case and the parties` observations, the same considerations apply in the present case. There has accordingly been a violation of Article 1 of Protocol No.1 to the Convention."

ii) <u>Gurisprudenza tal-Qrati Maltin</u>

Fejn jidhol l-Art 1 Prot 1 tal-Konvenzjoni, bil-bosta matul is-snin kienu d-decizjonijiet tal-qrati taghna fejn kienet dikjarata vjolazzjoni. Taghmel referenza biss ghal xi whud fost hafna ohra : **<u>Dr. Cedric Mifsud et vs l-Avukat Generali et</u>** deciza mill-QK fil-25 ta` Ottubru 2013 ; **<u>Angela sive` Gina Balzan vs L-Onorevoli Prim Ministru et</u>** deciza mill-QK fis-7 ta` Dicembru 2012 ; **<u>AIC Joseph Barbara et vs L-Onor Prim Ministru et</u>** deciza 31 ta` Jannar 2014 ; **<u>Maria Ludgarda Borg et vs Rosario Mifsud et</u>** deciza mill-QK fid-29 ta` April 2016 ; **<u>Concetta sive` Connie Cini vs Eleonora Galea et</u>** deciza mill-QK fil-31 ta` Jannar 2014 ; **<u>Robert Galea vs Avukat Generali et</u>** deciza mill-PA/GK fis-7 ta` Frar 2017 (mhux appellata) ; **<u>Rose Borg vs Avukat Generali et</u>** deciza mill-QK fil-11 ta` Lulju 2016 ; id-diversi kawzi bl-*occhio* **<u>Josephine Azzopardi et vs L-Onor Prim Ministru et</u>** li kienu decizi fil-25 ta` April 2018 ; u **<u>Sergio Falzon et vs Alfred Farrugia et</u>** deciza fit-30 ta` Jannar 2018.

Il-lista tad-decizjonijiet hija twila u facilment traccjabbli. Fl-assjem taghhom dawn id-decizjonijiet indirizzaw il-qofol tal-kwistjoni u kellhom piz sinjifikanti li wassal ghal bdil fil-legislazzjoni.

Fl-istess waqt tghid ukoll li l-bidliet fil-legislazzjoni kienu tardivi. Min-naha tal-Istat matul is-snin kien hemm tkaxkir tas-saqajn evidenti li wassal ghal pronunzjamenti wiehed wara l-iehor mill-ECtHR kontra Malta.

Fil-qasam tal-harsien tal-jeddijiet fondamentali tal-persuna, l-espressjoni : *meglio tardi che mai* : ma tregix. Tista` tkun ta` konfort ghall-gejjieni ; certament pero` ma tghoddx ghall-imghoddi.

Fejn si tratta ta` ksur ta` jeddijiet fondamentali, l-Istat ghandu l-obbligu li jirrimedja, anke b`legislazzjoni, fil-pront u

bla dewmien, ladarba din taghna hija socjeta` demokratika fondata fuq is-saltna tad-dritt u l-gustizzja.

iii) Risultanzi

Fil-kaz tal-lum, jirrizulta li s-subcens temporanju beda jiddekorri b`effett mill-1964. Bis-sahha tal-kuntratt il-partijiet kienu ftehmu li l-koncessjoni enfitewtika kellha ddum ghal 17-il sena. Waqt li kien ghaddej il-kuntratt, dahal fis-sehh l-Att XXXIII tal-1979 fejn *inter alia* dahhal disposizzjoni gdida fil-Kap 158 li kienet l-Art 12. Bl-applikazzjoni tas-subartikoli (2) u (3), meta cens temporanju ma kienx jeccedi t-30 sena, fi tmiem il-kuntratt, l-okkupant kellu l-ghazla li jikkonverti it-titolu tieghu *ope legis* ghal kera dment li l-okkupant ikun cittadin Malti, li l-fond ikun id-dar ta` abitazzjoni tieghu, u li jhallas kera li tasal sad-doppju li kien ihallas bhala cens bil-quantum tal-kera ikun determinat skont indici ta` inflazzjoni bil-modalita` stabbilita fil-ligi. Ghalhekk bl-Att XXIII tal-1979, l-ammont ta` kera li kellha tithallas ma thalliex ghall-kontrattazzjoni libera ta` bejn is-sid u l-inkwilin (gia` censwalist) [kif kien il-kaz meta nghatat il-koncessjoni] izda kien determinat mil-ligi stess. Meta nghatat il-koncessjoni enfitewtika in kwistjoni, il-partijiet kienu liberi illi jikkontrattaw il-pattijiet u kondizzjonijiet, inkluz ukoll l-ammont tal-canone u z-zmien tal-koncessjoni. Din il-liberta` twarrbet mil-legislatur bl-Att XXIII tal-1979.

Indubbjament l-intervent legislattiv biex jirregola x`jigri meta jigi fi tmiemu cens temporanju gab mizura ta` kontroll li kienet mahsuba sabiex tkun evitata sitwazzjoni fejn min kien qed jokkupa b`cens temporanju fond residenzjali ma jispiccax minghajr saqaf fuq rasu jew ghaliex ma jkunx jiflah ihallas aktar jew ghaliex ma jkunx wasal fi ftehim mas-sid. Bl-intervent legislattiv, is-sid tilef il-jedd li jikkontratta liberament il-kirja li kellha titwieled wara t-tmiem tac-cens temporanju. Tilef ukoll kontroll fuq kemm ghandu jircievi kera ghaliex l-ammont li kellu jithallas kien determinat mill-Istat b`formola stabbilita fil-ligi stess, marbuta mal-fattur taz-zmien u b`indici tal-inflazzjoni, kriterju dan tal-ahhar li l-prova taz-zmien uriet li ma kienx jirrifletti r-realta` tas-suq.

Is-sitwazzjoni ekonomika u socjali ta` Malta fiz-zmien li sar l-Att XXIII tal-1979 kienet tirrendi necessarju l-intervent tal-Istat sabiex jipprova johloq bilanc bejn interessi konfliggenti. It-tkattir tal-gid mal-medda tas-snin wera pero` li dak l-intervent legislattiv, ghalkemm kellu skop tajjeb, ma kienx baqa` joffri bilanc adegwat. Anzi holoq sproporzjon u zvantagg konsiderevoli kontra s-sidien. Il-kera li s-sidien

setghu jippercepixxu bl-effett tal-Art 12(2) tal-Kap 158, imqabbla mal-kera fis-suq hieles, oggettivament bdiet issir baxxa wisq, u sena wara l-ohra zdiedet id-disparita` kontra s-sidien. Minkejja l-firxa ta` negattivita` li gabet maghha l-pandemija tal-COVID-19, illum is-sitwazzjoni ekonomika tal-pajjiz (ghalkemm certament mhijiex ward u zahar ghal kulhadd, specjalment ghal dawk li huma vulnerabbli jew zvantaggjati jew li jinsabu taht nett fl-istrati socjali tas-socjeta` Maltija) hija bil-wisq ahjar minn dik li kienet fl-1979, meta l-Istat hass il-htiega mpellenti li jghaddi l-emendi ghall-Kap 158.

Fil-kaz tal-lum, il-pern tal-ilment tar-rikorrenti huwa l-fatt illi l-applikazzjoni tal-Art 12 tal-Kap 158 ghas-sitwazzjoni taghhom tikkostitwixxi ksur tal-jeddijiet fondamentali taghhom, ghaliex jirrizulta sproporzjon qawwi kontra taghhom fil-kera li jistghu jippercepixxu li kieku t-tgawdija tal-propjeta` kellha tithalla tilhaq il-milja taghha. Mhuwiex in kontestazzjoni il-jedd legittimu tal-Istat illi b`ligi jikkontrolla l-uzu tal-proprjeta` meta dan jirrizulta illi huwa fl-interess pubbliku. Fl-istess waqt, l-Istat ghandu l-obbligu li jassikura li bid-disposizzjonijiet tal-ligi, u allura bl-applikazzjoni taghhom, jinzamm bilanc u proporzjonalita`.

Tajjeb li jkun rikonoxxjut il-fatt li matul iz-zmien anke l-Istat intebah li dak li wasslu biex jintervjeni fl-1979 kien jehtieg ripensament motivat minn bidla lejn l-ahjar fil-qaghda ekonomika u socjali tal-pajjiz. Il-qorti tqis li bl-emendi tal-2009 u tal-2010 ghall-Kap 16, il-kera kellha tizdied kull tlett snin (mhux kull 15-il sena kif kienet il-ligi bl-emendi tal-1979). Qabel id-dhul fis-sehh ta` dawk l-emendi, ir-rikorrenti kienu ilhom snin twal igarrbu lezjoni tal-jedd taghhom skont l-Art 1 Prot 1 tal-Konvenzjoni. Cio` nonostante xorta wahda dawk l-emendi ma sehhilhomx jilhqu dak il-bilanc rikjest mill-Art 1 tal-Prot 1 tal-Konvenzjoni, ghaliex ghalkemm kien hemm miljorament ghas-sid meta mqabbel mas-sitwazzjoni precedenti, baqa` kostrett joqghod ghal quantum ta` zieda rigida u dettat mil-ligi li mponiet mhux biss kemm ghandu jkun l-awment izda anke kull meta.

Fid-decizjoni taghha tal-11 ta` Dicembru 2014 fil-kaz ta` **<u>Anthony Aquilina vs Malta</u>** l-ECtHR irrimarkat illi : "*the 2009 and 2010 amendments (only) slightly improved a landlord`s position*".

Fis-sentenza tas-27 ta` Marzu 2015 fil-kawza "**<u>Ian Peter Ellis et vs Avukat Generali et</u>**, il-Qorti Kostituzzjonali stabbiliet illi :-

"Lanqas l-emendi ghall-Kodici Civili li sehhew bl-Att tas-sena 2009 ma jistghu jitqiesu bhala li jaghtu rimedju effettiv ghall-lanjanzi tar-rikorrenti, kemm ghax tezisti diskrepanza enormi bejn l-awment fil-kera kontemplat fl-artikolu 1531C u l-valur lokatizju tal-fond fis-suq hieles, kif ukoll ghax id-disposizzjonijiet tal-artikolu 1531F, fic-cirkostanzi tal-kaz, jaghmlu remota l-possibilita` li dawn jipprendu l-pussess tal-fond taghhom."

L-emendi l-ohra li kienu ntrodotti bl-Att XXVII tal-2018 u li dahlu fis-sehh fl-1 ta` Awissu 2018 tejbu sostanzjalment il-qaghda tas-sidien. Dawk l-emendi mhux se jincidu fuq l-esitu ta` din il-kawza ghaliex fil-kawza tal-lum mhijiex qeghda tkun disputata l-kostituzzjonalita` tal-Art 12B tal-Kap 158 li kien introdott bl-Att XXVII tal-2018.

Fil-kaz tal-lum, jirrizulta li r-rikorrenti garrbu sproporzjon li l-Art 1 Prot tal-Konvenzjoni ma jridx.

Il-qorti tishaq fuq il-htiega li jinzamm proporzjon ragjonevoli bejn il-mezzi u l-ghan persegwiti mill-Istat sabiex jikkontrolla l-uzu tal-proprjeta`. Ir-*raison d`etre* tal-proporzjonalita` huwa l-"*bilanc xieraq*" li ghandu jinzamm bejn l-esigenzi tal-interess generali u l-htiega tal-harsien tad-drittijiet fondamentali tal-persuna. Il-qrati huma msejha sabiex jaghmlu analizi komprensiva tal-interessi kollha tal-partijiet sabiex ikun accertat jekk bhala konsegwenza tal-indhil mill-Istat, il-persuna tkun tghabbiet b`piz eccessiv u sproporzjonat.

Qeghda tichad l-eccezzjonijiet tal-intimati safejn fit-tieni domanda ntalbet dikjarazzjoni u decizjoni mill-qorti li kien imgarrab mir-rikorrenti ksur tal-jedd fondamentali taghhom ghat-tgawdija tal-propjeta` kif imhares bl-Art 1 Prot 1 tal-Konvenzjoni.

Fl-ambitu tat-tieni talba, ir-rikorrenti talbu lill-qorti sabiex taghtihom rimedji xierqa.

Il-qorti tghid li r-rimedju xieraq ghandu jkun kostitwit <u>**principalment**</u> mill-ghoti ta` kumpens fl-ghamla ta` danni pekunjarji u danni morali.

Tghid "**principalment**" ghaliex ghalkemm mhijiex sejra tordna bhala rimedju l-izgumbrament tal-intimata Spira Zahra mill-fond de quo. (ara s-sentenzi : **Angela sive Gina Balzan v. L-Onorevoli Prim Ministru et** : 07/12/2012 ; 25/10/2013 : **Dr. Cedric Mifsud et v. L-Avukat Generali et** ; 29/04/2016 : **Maria Ludgarda sive Mary Borg et vs Rosario Mifsud et** ; 11/07/2016 : **Rose Borg vs Avukat Generali et** ; 22/02/2012 : ECtHR : **Frendo Randon and Others v. Malta** ; 12/06/2012 : ECtHR : **Lindheim and Others v. Norway**) fl-istess waqt sejra tiddikjara li l-intimata ma tistax tibqa` tistrieh fuq id-disposizzjonijiet l-Art 12 tal-Kap 158 sabiex tibqa` tokkupa l-fond bhala r-residenza ordinarja taghha.

3. It-tielet talba

Ir-rikorrenti talbu dikjarazzjoni u decizjoni mill-qorti li l-Avukat Generali (illum l-Avukat tal-Istat) huwa responsabbli ghall-hlas ta` kumpens in vista tal-vjolazzjoni subita tal-jeddijiet fondamentali taghhom.

L-Istat huwa responsabbli ghall-promulgazzjoni ta` ligi.

L-Istat huwa rapprezentat mill-Avukat tal-Istat.

Ghalhekk jekk bl-applikazzjoni ta` ligi ssehh vjolazzjoni tal-jeddijiet fondamentali tal-persuna, l-Avukat tal-Istat ghandu jaghmel tajjeb ghall-vjolazzjoni tal-jeddijiet fondamentali li din il-qorti accertat (*supra*) li r-rikorrenti garrbu.

Billi accertat li r-rimedju favur ir-rikorrenti ghandu jinkludi l-ghoti ta` kumpens, il-qorti sejra tilqa` t-tielet talba.

4. Ir-raba` talba

Ir-rikorrenti talbu l-likwidazzjoni ta` kumpens u danni.

i) Gurisprudenza

Huwa principju ben assodat illi l-kumpens li jista` jinghata fi procediment ta` natura kostituzzjonali mhuwiex ekwivalenti ghad-danni civili li jigu likwidati mill-qrati ordinarji (ara : QK : **Philip Grech pro et noe v. Direttur tal-Akkomodazzjoni Socjali et** deciza fis-17 ta` Dicembru 2010 ; **Victor Gatt et v. Avukat Generali et** deciza fil-5 ta` Lulju 2011 ; u **Ian Peter Ellis et v. Avukat Generali et** deciza fl-24 ta` Gunju 2016).

Fid-decizjoni ta` **Maria Stella sive Estelle Azzopardi et vs Avukat Generali et** deciza fit-30 ta` Settembru 2016, il-Qorti Kostituzzjonali kompliet tippreciza illi r-"*rimedju li taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fondamentali u mhux danni civili ghal opportunita` mitlufa."*

Dan premess, huma diversi l-konsiderazzjonijiet li l-Qorti ghandha tqis sabiex tistabilixxi l-*quantum* tal-kumpens.

Decizjoni li kkunsidrat fid-dettall din il-kwistjoni hija s-sentenza li tat il-Qorti Kostituzzjonali fil-kawza **Raymond Cassar Torregiani et vs Avukat Generali et** deciza fid-29 ta` April 2016.

Il-Qorti qalet hekk :-

> "*Dwar il-quantum tal-kumpens dovut issir referenza ghas-sentenza ta` din il-Qorti* ***Igino Trapani Galea Feriol pro et noe et V Kummissarju tal-Artijiet et*** *deciza fil-31 ta` Ottubru 2014, fejn f` materja ta` komputazzjoni ta` kumpens ghal lezjoni ta` dritt fondamentali sancit fl-artikolu konvenzjonali fuq citat gie osservat:*
>
> *"Rigward il-quantum tal-kumpens stabbilit mill-ewwel Qorti, din il-Qorti tosserva fl-ewwel lok li kull kaz ghandu jigi trattat u deciz fuq il-fattispecie tieghu. Barra minn hekk, jekk il-Qorti Ewropeja hasset li f` certi kazijiet kellha taghti kumpens f` ammont inferjuri ghal dak li nghata lir-rikorrenti mill-ewwel Qorti, ma jfissirx li allura l-Qrati Maltin tilfu l-awtonomija taghhom b` mod li bilfors kumpens li jinghata ikun f` ammont vicin dak li taghti l-Qorti Ewropeja. Fil-kaz odjern l-ewwel Qorti hadet in konsiderazzjoni l-fatturi kollha li jimmilitaw kemm favur kif ukoll kontra r-rikorrenti u deherilha li l-kumpens*

xieraq li ghandha taghti f`dan il-kaz ikun fl-ammont ta` hamsa u ghoxrin elf Euro (EUR 25,000). Hija kkonsidrat id-dewmien da parti tar-rikorrenti li jiehdu l-proceduri opportuni, il-valur tal-immobbli, iz-zmien tant twil li r-rikorrenti ilhom privati mill-godiment tal-proprjeta` taghhom minghand ma nghata ebda kumpens, l-istat tal-fond u l-ezistenza tal-fattur tal-interess pubbliku. Ma` dawn ghandu jigi senjalat il-fatt li qabel l-ispossessament tal-proprjeta` taghhom ir-rikorrenti kellhom permess mill-Bord kompetenti sabiex jizviluppaw il-fond."

Issa ghalkemm, huwa minnu illi l-valur tal-kumpens akkordat mill-Qorti wara sejba ta` lezjoni tad-drittijiet fondamentali ma jekwiparax necessarjament ma` likwidazzjoni ta` danni civili attwali sofferti, ma jfissirx li d-danni materjali ghandhom jigu injorati ghall-finijiet tal-ezercizzju odjern. Il-Qorti trid tqis il-fatturi kollha rilevanti ghall-kaz odjern sabiex tasal ghad-determinazzjoni tal-quantum. Dawn huma (1) it-tul ta` zmien li ilha ssehh il-vjolazzjoni konsidrat ukoll fid-dawl tat-tul taz-zmien li r-rikorrenti damu sabiex resqu l-proceduri odjerni biex jirrivendikaw id-drittijiet kostituzzjonali taghhom ; (2) il-grad ta` sproporzjoni relatat mal-introjtu li qed jigi percepit ma` dak li jista` jigi percepit fis-suq hieles, konsidrat ukoll l-ghan socjali tal-mizura; (3) id-danni materjali sofferti mir-rikorrenti konsidrat ukoll l-ispejjez sostanzjali li ghamlu l-intimati Tabone ssabiex jirrendu l-fond abitabbli u (4) l-ordni li ser taghti din il-Qorti dwar l-ezenzjoni f` da nil-kaz mill-effetti legali tal-Artikolu 5 tal-Kap 158."

Meta jinghata kumpens fi procediment ta` din ix-xorta, ghandu jinghata konsiderazzjoni l-ghan li jkun immotiva l-mizura u cioe` l-interess pubbliku. Ghalhekk il-kumpens likwidat ghandu jkun anqas minn kumpens li jista` jinkiseb fis-suq hieles (ara : QK : **<u>Carmen Cassar vs Direttur ghall-Akkomodazzjoni Socjali et</u>** : 12 ta` Lulju 2011).

Issir referenza ghas-sentenza tal-Qorti Kostituzzjonali tal-31 ta` Jannar 2014 fil-kawza : **<u>Concetta sive Connie Cini vs Eleonora Galea et</u>** : fejn inghad :-

"25. F`materja ta` kumpens il-gurisprudenza patria kif ukoll dik tal-Qorti Ewropeja identifikat is-segwenti principji :

"The Court would reiterate that compensation terms under the relevant legislation may be material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate balance on applicants. The taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference." [ECHR 31443/96 para.176 Bronoiswki v. Poland, decided 22 June 2004].

26. Fil-kawza Louis Apap Bologna v. Calcidon Ciantar et deciza 24 Frar 2012, din il-Qorti osservat hekk:

"F\`kazijiet bhal dawn il-kumpens xieraq ghandu jiehu in konsiderazzjoni l-ghan legittimu li mmotiva l-mizura tar-rekwizizzjoni u li l-kumpens jista\` jkun anqas mill-kumpens shih li altrimenti jkun dovut skond il-kriterji tas-suq. Il-Qorti Ewropea fil-kazijiet ta\` Edwards v Malta u Ghigo v Malta 17 Lulju 2008] ddecidiet li :

"Para.76. As the Court has already stated on may occasions, in spheres such as housing of the population, States necessarily enjoy a wide margin of appreciation not only in regard to the existence of the problem of general concern warranting measures for control of individual property, but also to the choice of the measures and their implementation. The State control over levels of rent is one such measure and its application may often cause significant reductions in the amount of rent chargeable (….Mellacher and Others v Austria para.45]."

27. Inoltre, "In the absence of a formal expropriation that is to say a transfer of ownership, the Court considers that it must look behind the appearances to investigate the realities of the situation complained of!.. Since the Convention is intended to guarantee rights that are practical and effective it has to be ascertained whether that situation amounted to a de facto expropriation [Sporrong & Lonnroth v. Sweden 18/12/1994; ara ukoll kawza Perit Duminku Mintoff, supra]".

28. Fil-kaz in dizamina, l-ewwel Qorti waslet ghall-konkluzjoni li l-kumpens dovut ex lege lill-intimati bis-sahha tal-artikolu precitat huwa wiehed irizorju meta komparat mal-valur tal-fond fis-suq. L-Avukat Generali jhossu aggravat bil-fatt li fid-determinazzjoni tal-fattur tal-proporzjonalita\` tal-mizura relattivament ghall-kumpens dovut, l-ewwel Qorti ma kellhiex timxi fuq l-istima tal-valur tal-fond fl-ammont ta\`

mija, hamsa u tletin elf Euro (€135,000) moghti ex parte mill-Perit inkarigat mill-intimati, izda se mai kellha timxi fuq l-istima ta` disghin elf Euro (€90,000) tal-Perit inkarigat mir-rikorrenti, stante li l- Konvenzjoni "ma tikkoncedi ebda dritt li xi hadd jircievi profitt, aktar u aktar fil-kuntest ta` proprjeta` li qed isservi ghall-finijiet ta` social housing."

29. Fir-rigward din il-Qorti tosserva li dan l-ilment tal-Avukat Generali huwa fondat. Inkwantu huwa konformi mal-principju, illum assodat kemm fil-gurisprudenza patrija kif ukoll f`dik tal-Qorti Ewropeja, li f`kaz ta` legislazzjoni li ghandha ghan socjali l-kumpens offrut jista` ma jkunx jekwivali ghall-valur tal-fond fis-suq.

30. Kif osservat il-Qorti Ewropeja fil-kaz Amato Gauci v. Malta, [Appl.47045/06, deciz 15 Dicembru 2009] :

"... [the Court] reiterating that legitimate objectives in the `public interest`, such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less that reimbursement of the full market value [see James and Others, cited above, para.54 and Jahn and Others v Germany [GC] nos.46720/99, 72203/01 and 72552/01, para.94..]

31. Illi jirrizulta pacifiku li fiz-zmien meta nghatat il-koncessjoni sub-enfitewtika, fil-11 ta` Jannar 1960 ic-cens annwu kien gie stabbilit fl-ammont ta` £35, illum wiehed u tmenin Euro, tlieta u hamsin centezmi (€81.53), li bl-applikazzjoni tal-Artikolu 12 jizdied ghal erba; mija, disgha u tmenin Euro u tmintax-il centezmi (€489.18)3. Inoltre, l-utilista, allura perpetwa tista` tifdi c-cens versu l-prezz ta` disat elef u tmien mitt Euro (€9,800) li minnu ghandu jitnaqqas il-capital gains tax ta` 12%.

32. Din il-Qorti tikkondividi l-hsieb tal-ewwel Qorti li l-ammont ta` cens dovut ex lege lill-intimati huwa baxx sal-punt li ma jistax jinghad li ghat-tfixkil sostanzjali fit-tgawdija tal-proprjeta` taghhom huma nghataw kumpens adegwat, kemm ghax fiz-zminijiet tal-lum il-quantum tac-cens annwu dovut ex lege jitqies bhala wiehed baxx meta jigi relatat mal-valur tal-fond, kif ukoll tenut kont tal-konsiderazzjoni li lir-rikorrenti, okkupanti tal-fond b`titolu ta` uzufrutt biss, qed tinghatalha dritt gdid li tibqa` tokkupa l-fond b`titolu ta` enfitewsi perpetwa, bil-possibilita` tarripreza tal-pussess fiziku tal-fond da parti tas-sidien tkun wahda remota hafna. Huwa

principalment dan il-fattur li, fil-fehema ta` din il-Qorti, jitfa` `a disproportionate and excessive burden` fuq is-siden.

33. Kif gja` osservat minn din il-Qorti fil-kawza Josephine Bugeja v. Avukat Generali, deciza 7 Dicembru 2009, ghad-determinazzjoni tal-fattur tal-proporzjonalita` ghandu jittiehed kont tal-effetti legali u prattici li l-applikazzjoni tal-artikolu ser iggib mieghu. Dan l-ezami ghandu jsir mhux in vacuo, izda skont il-fattispecje tal-kaz. "Huwa l-ezercizju ta` dak id-dritt fil-prattika u b`mod konkret, u mhux l-ezistenza tieghu fl-astratt, li jista` bhal fil-kaz in ezami, talvolta jammonta ghal-lezjoni ta` dritt fondamentali" [para.45]. Jigi ribadit li l-Qorti ghandha thares lejn l-effett prattiku tas-sitwazzjoni, peress li, kif sostnut mill-Qorti Ewropeja, il-konvenzjoni tiggarantixxi drittijiet li huma "practical and effective" biex jigi stabbilit jekk is-sitwazzjoni fil-fatt tammontax ghal esproprijazzjoni de facto."

Fis-sentenza ta` din il-Qorti diversament presjeduta tas-7 ta` Frar 2017 fil-kawza : **Robert Galea vs Avukat Generali et**, inghad hekk :-

"Illi ghal dak li jirrigwarda t-talba tal-kumpens il-Qorti tqis li din it-talba hija l-effett naturali tas-sejbien tal-ksur tal-jedd invokat. Huwa mizmum li, ladarba Qorti ssib li r-rikorrent garrab ksur tal-jedd tieghu kif imhares bl-artikolu 1 tal-Ewwel Protokoll tal-Konvenzjoni, ma huwiex bizzejjed li tieqaf b`semplici dikjarazzjoni bhal dik. Ghalkemm ir-rimedju xieraq mhuwiex lanqas u tabilfors il-kundanna ta` hlas ta` kumpens bhallikieku l-haga li dwarha sehh il-ksur kienet inbieghet, xi ghamla ta` kumpens huwa misthoqq u doveruz. Hawn ukoll, il-Qorti qieghda zzomm quddiem ghajnejha li l-ksur imgarrab mir-rikorrent jikkonsisti f`indhil dwar u mhux f`tehid tal-gid tieghu;

Illi b`zieda ma` dan, ir-rikorrent jitlob ukoll il-hlas tad-danni "ai termini tal-artikolu 41 tal-Konvenzjoni Ewropeja";

Illi l-Qorti tibda biex tghid li l-kumpens misthoqq lill-persuna wara li jkun instab li din garrbet ksur ta` xi jedd fondamentali taghha ma huwiex l-istess bhal-likwidazzjoni u hlas ta` danni mgarrba. Minbarra dan, ir-rikorrent ma jistax jistrieh fuq l-ghoti ta` kumpens taht l-artikolu minnu msemmi tal-Konvenzjoni. Fl-ewwel lok, il-Konvenzjoni taghmel mil-ligijiet ta` Malta safejn id-dispozizzjonijiet taghha kienu inkorporati

fil-Kapitolu 319 tal-Ligijiet ta` Malta. L-imsemmi artikolu ma kienx hekk inkorporat. Fit-tieni lok, huwa maqbul li d-dispozizzjonijiet ta` dak l-artikolu jghoddu ghall-Qorti ta` Strasbourg u mhux ghall-qrati domestici tal-Pajjizi Membri tal-Kunsill tal-Ewropa (Ara Kost. 30.9.2016 fil-kawza fl-ismijiet Maria Stella Azzopardi Vella et vs Avukat Generali et);

Illi b`daqshekk ma jfissirx li t-talbiet tar-rikorrent dwar l-ghoti ta` rimedju mhumiex sejrin jintlaqghu. Jekk ma jistghux jintlaqghu talbiet ghal-likwidazzjoni ta` kumpens u danni bis-sahha tal-imsemmi artikolu 41 tal-Konvenzjoni, jista` u sejjer jinghata rimedju taht il-kriterji tal-ghoti ta` rimedju bhal dan minn din il-Qorti fis-setghat u kompetenza attwali taghha (Kost. 17.12.2010 fil-kawza fl-ismijiet Philip Grech pro et noe vs Direttur tal-Akkomodazzjoni Socjali et).

Ghalhekk, il-Qorti tasal ghall-fehma li t-tieni rimedju mitlub mir-rikorrenti fit-tielet, ir-raba` u l-hames talbiet tieghu ma jisthoqqlux jintlaqa`, imma sejjer jinghata kumpens taht it-tieni talba tieghu;

Illi huwa llum stabbilit li r-rimedju li tista` taghti din il-Qorti huwa kumpens ghall-ksur tad-dritt fondamentali u mhux danni civili ghal opportunita` mitlufa (Kost. 22.2.2013 fil-kawza fl-ismijiet Albert Cassar et vs Onor. Prim Ministru et). Biex tasal ghal dan, il-Qorti jehtigilha tqis ghadd ta` fatturi, fosthom it-telf effettiv li jkun garrab is-sid, l-ghan socjali mahsub mil-ligi, il-grad ta` sproporzjon fit-tqabbil bejn id-dhul attwali li qieghed jircievi r-rikorrent mad-dhul li jista` jinkiseb fis-suq hieles, id-danni materjali li l-parti rikorrenti tista` tipprova li garrbet u wkoll l-effetti tal-ordni li l-Qorti tista` taghti dwar jekk l-okkupant jistax jibqa` jistrieh aktar fuq it-thaddim tal-ligi attakkata. Minn kif wiehed jista` jara, dawn il-kriterji huma firxa shiha li trid titqies f`kull kaz ghalih u jiddependu hafna mic-cirkostanzi partikolari ta` kull kaz;

Illi dwar il-kumpens dovut lir-rikorrent, madankollu, tqum konsiderazzjoni ohra. Ghalkemm ir-rikorrent harrek ukoll lill-intimati Ganado, izda dan ma jfissirx li huma l-istess intimati Ganado li jridu jhallsu lir-rikorrent il-kumpens li sejjer jinghata jew li jaghmlu tajjeb ghal ghazla li kienet taghtihom il-ligi. Kumpens bhal dak ghandu jbatih biss l-Istat minhabba li l-ksur li qed igarrab ir-rikorrent huwa l-effett dirett tal-ligi li ddahhlet bl-Att XXIII tal-1979. L-intimati Ganado nqdew b`ligi li tathom jeddijiet godda li ma kellhomx fiz-zmien meta nghatat il-koncessjoni enfitewtika, izda ma ghamlu xejn biex jiksbu dan

il-jedd b`mod illegali. Fid-dawl tal-massima qui suo jure utitur neminem laedere videtur, l-Qorti ma tistax issib li l-intimati Ganado jridu jaghmlu tajjeb huma wkoll ghall-hlas tal-kumpens lir-rikorrent minhabba s-sejbien ta` ksur tal-jedd fondamentali tieghu. Din il-fehma tinbena wkoll fuq il-fatt li l-ilment tar-rikorrent jirrigwarda ligi li jaghmilha l-Istat u mhux ic-cittadin li, min-naha tieghu, ghandu jedd jinqeda biha fil-parametri taghha u safejn din ma titqiesx li qieghda tikser il-jedd fondamentali tas-sid;

Illi kif inhu mizmum u mghallem "fil-kaz ta` ligi leziva tad-drittijiet konvenzjonali jew kostituzzjonali, huwa l-Istat u mhux ic-cittadin li ghandu jirrispondi. Ghax huwa principalment l-obbligu tal-Istat, u mhux tal-inkwilin, li jassigura li d-drittijiet fondamentali tas-sid ma jinkisrux" (Kost. 24.2.2012 fil-kawza fl-ismijiet Louis Apap Bologna vs Kalcidon Ciantar et; u Kost. 6.2.2015 fil-kawza fl-ismijiet Sean Bradshaw et vs L-Avukat Generali et);

Illi meta wiehed iqis ic-cirkostanzi kollha li johorgu mill-provi mressqa u jhaddem dwarhom ir-regoli li dawn il-qrati minn zmien ghal zmien inqdew bihom f`kazijiet li jixxiebhu (Kost. 29.4.2016 fil-kawza fl-ismijiet Raymond Cassar Torregiani et vs Avukat Generali et), il-Qorti ssib li jkun xieraq li jithallas kumpens lir-rikorrent fis-somma ta` sebat elf euro (€ 7,000). Din is-somma qieghda tqis ukoll iz-zmien li r-rikorrent ha biex ressaq l-ilment tieghu quddiem il-Qorti (Ara Kost 25.5.2012 fil-kawza fl-ismijiet Josephine Mary Vella vs Direttur tal-Akkomodazzjoni Socjali et)."

Fis-sentenza ta` din il-Qorti diversament ippreseduta moghtija fit-30 ta` Jannar 2018 fil-kawza fl-ismijiet **Sergio Falzon et vs Alfred Farrugia et** (u konfermata b`sentenza tal-Qorti Kostituzzjonali tal-14 ta` Dicembru 2018) inghad hekk :-

Illi fil-kaz odjern il-Qorti taqbel li dikjarazzjoni ta` ksur mhijiex sodisfacenti in vista tal-fatt li skont ir-rapport peritali, l-esponenti ghamlu telf pekunjarju konsiderevoli u ser ikomplu jaghmlu telf bl-applikazzjoni tal-ligi sakemm il-fond jintradd lura. Ghaldaqstant taqbel mar-rikorrenti li dikjarazzjoni ta` ksur mhijiex idonea sabiex terga` issir reintegrazzjoni tal-proporzjonalita` u tpoggi lir-rikorrenti fl-istatus quo ante ;

…

Ghal dak li jirrigwarda kumpens bhala rimedju ghad-danni non-pekunjarji ghas-sejbien ta` lezjoni tad-dritt fondamentali tar-rikorrenti kawza tal-applikazzjoni f`dan il-kaz tal-Artikolu 12(2) tal-Kap. 158, ir-rikorrenti ghandhom jedd ghalih meta tqis li ilhom mis-sena 1985 (izjed minn tletin sena) ma jiehdu kumpens gust ghall-fond taghom, u dan minkejja l-liberalizzazzjoni tas-suq fis-sena 1995 u li l-iskop legittimu sfuma mat-trapass taz-zmien. Tali jedd ghandu jigi kkalkulat mid-data tat-terminazzjoni tal-koncessjoni subenfitewtika, cioe`, mis-sena 1985.

*Skont il-prospett tal-perit tekniku il-rendita` mill-valur lokatizju fuq is-suq kellu jammonta ghal €93,217 ghas-snin 1985 sa 2016. Il-kera attwalment imhallsa kienet tammonta ghall-€16,765.50 (Tabella 4.0) (17%) Madanakollu hu assodat li r-rimedju kostituzzjonali ma jfissirx necessarjament ir-rimbors tal-valur shih fuq is-suq lis-sid. (Ara ad ez. ECtHR Kaz **Ghigo vs. Malta** 17 ta` Lulju 2008, #18; Kaz **Edwards vs. Malta**, 17 ta` Lulju 2008; #21; u l-QK fil-kaz **Borg vs Mifsud** sucitata) Specjalment meta bhal fil-kaz odjern, il-proprjeta` ma ittiehditx mill-Istat imma ghandha eventwalment tigi liberata favur is-sid minhabba r-rimedju li ser taghti din il-Qorti apparti l-kumpens.*

*Il-Qorti Kostituzzjonali f`**Borg vs Mifsud** citat supra, wara li qieset li:*

"l-ghan principali tal-proceduri odjerni u ta` dak mitlub mir-rikorrenti, li huwa dak li jigi determinat jekk ir-rikorrenti sofrewx lezjoni tad-dritt fondamentali taghhom, u fil-kaz affermattiv, "… tiffissa kumpens xieraq ghal tali vjolazzjoni stante li r-rikorrenti baqghu dawn is-snin kollha [mill-1 ta` Dicembru 1998 sallum] minghajr il-pussess u t-tgawdija tal-proprjeta` taghhom" u taghti dawk ir-rimedji li l-Qorti jidhrilha xierqa inkluz li jiehdu lura l-pussess tal-fond proprjeta` taghhom…".

Ikkonsidrat li

"Din id-diskrepanza ta` 18% bejn il-kera fis-suq hieles u l-kera attwalment percepita mir-rikorrenti, timmilita favur ir-rikorrenti fil-komputazzjoni tal-kumpens ghax hija fattur relevanti hafna fil-komputazzjoni tal-estent tal-vjolazzjoni."

Izda dik il-Qorti kkonsidrat ukoll il-fattur li r-rikorrenti damu milli jipprevalu ruhhom mir-rimedju kostituzzjonali kif ukoll kkonsidrat ir-rimedju li kien ser jinghata b`dak il-gudizzju, li permezz tieghu l-intimati ma jistghux ikomplu aktar jistriehu fuq l-Att XXIII.1997 biex jibqghu jokkupaw il-fond de quo. Din il-Qorti ma taqbilx li ghandu jkun hemm tnaqqis dwar id-dewmien. (Dwar id-dewmien vide contra s-sentenza tal-Qorti Ewropea fil-kaz fl-ismijiet "Apap Bologna vs Malta" deciza r fit-30 ta` Novembru 2016 fejn irrimarkat:-

"46. The Court also takes issue with the fact that in line with domestic case-law, such compensation awards are reduced on the grounds that the applicants have instituted constitutional redress proceedings several years after they started suffering the violation complained of. In this connection, the Court notes, first and foremost, that domestic law does not impose a time-limit for the institution of constitutional redress proceedings. The legislator leaves the choice of timing to the applicant. Moreover, in circumstances such as those of the present case, the violation complained of is a continuing one. The Court thus finds that such reasoning is questionable in the light of the circumstances of the case and the domestic legal framework, which appears to give great latitude to individuals seeking redress for human rights violations.")

Ghaldaqstant wara li qieset bir-reqqa l-provi u s-sottomissjonijiet kollha, din il-Qorti qed tillikwida l-kumpens fl-ammont ta` hmistax-il elf ewro (€15,000) tenut kont il-valur tal-proprjeta` bhala liberu u vakanti (€145,000) u li l-izbilanc bejn il-kera imhallsa u l-valur lokatizju qed ikompli jizdied kull ma jghaddi z-zmien anke bl-applikazzjoni tal-emendi tal-2010. Dan il-kumpens ghandu jithallas mill-Intimat Avukat Generali flimkien mal-imghaxijiet bir-rata ta` hamsa fil-mija (5%) sad data tal-pagament effettiv."

(ara wkoll : 2 ta` Marzu 2018 : QK : **<u>Thomas Cauchi et vs Avukat Generali et</u>**)

Fid-decizjoni **<u>Cassar vs Malta</u>** tat-30 ta` Jannar 2018 (App. 50570/13) l-ECtHR qalet hekk dwar kif kellu jkun applikat l-Art 41 tal-Konvenzjoni ghal dak il-kaz :-

A. <u>Damage</u>

84. The applicants claimed 1,260,996 euros (EUR) in respect of pecuniary damage. That sum reflected (i) the rent due to them from 1998 to 2015 amounting to EUR 730,330 calculated on the basis of the valuation of an estate agent at EUR 3,500 per month, (EUR 42,000 annually) in 2015, projected backwards to the year 1998 based on two indices for property prices published by the Central Bank of Malta – by means of example, such projections show the rents for the respective years as follows: EUR 6,857 annually in 1988, EUR 18,476 in 1998 and EUR 41,649 in 2008; (ii) EUR 502,006 in simple interest at 8% (capped so as not to exceed the rent of a particular year); and (iii) EUR 28,660 (supported by an architect`s report) in repairs needed to the property since the tenant had failed to take adequate care of the property. In this connection the applicants noted that as things stand, they will remain suffering the effects of the violation even after the Court judgment, for an unspecified amount of years to come. In this light they also considered that their claim of EUR 54,000 in respect of non-pecuniary damage already suffered, representing EUR 2,000 annually since 1988, should be upheld in full.

85. The Government submitted that if a violation were to be found a declaration to that effect would suffice. In any event, they considered that the valuations were exorbitant, speculative and not based on an architect`s report. They noted that the property had been purchased in 1988 at EUR 25,600 it had therefore hardly been imaginable that it could now have a rental value of EUR 42,000 annually. Indeed if it had to be divided over the years, their claim in rent amounted to around EUR 27,000 annually which would surely not reflect the rental value in the eighties and nineties. They further considered that since the applicants had accepted rent until 2008, their claim should only refer to the subsequent years. Moreover, the tenant had deposited rent for the period between 2009-15 amounting to EUR 2,796 which had to be deducted from the award of compensation. As to interest the Government noted that under domestic law, interest was due only on amount liquidated, which was not the case here. Moreover a rate of 8% was far beyond any commercial rate of interest currently available in the banking sector in respect of deposits. As to the structural works the Government considered this clam unproven and hypothetical. Lastly, the Government considered that an award under this head should not exceed EUR 10,000,

which would be EUR 2,123.66 annually over six years, and an award for pecuniary damage should not exceed EUR 4,000.

86. The Court notes that the applicants are entitled to compensation in respect of the loss of control, use, and enjoyment of their property from around 2000 to date. The Court notes on the one hand that the rent suggested by the Government is not based on any valuation or other criteria, and appears to be a simple division of an aleatory sum they proposed. On the other hand, while the applicant`s valuation is based on an estate agent, and was not accompanied by an architect`s report, the domestic court found that EUR 3,000 as opposed to the EUR 3,500 alleged by the applicants appeared reasonable. However, the Court also notes that the comparators used by the estate agent refer to renovated buildings with high quality finishing and furnishing. While no information has been submitted as to the quality of the interior of the applicants` property the Court observes that the applicants claim that their property needs repairs as it has not been well taken care of (see paragraph 84 above). Thus, the latter cannot be considered to be in the same condition and at the same rental value as the former. Therefore, the Court considers that the valuation submitted by the applicants is on the high side, but may nonetheless provide a relevant indication and workable basis.

*87. In assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It further notes that from 2008 onwards, the Court found the legitimacy of the aim pursued highly questionable (see paragraph 53 above) and thus does not justify a reduction compared with the free market rental value (compare, **Zammit and Attard Cassar**, § 75; and **Amato Gauci**, § 77, both cited above). It further takes note of the sums already received by the applicants and those, following 2008, which were deposited in court and therefore remain retrievable, which are being deducted from the award.*

88. In the present case the Court must, however, also take note of the fact that the applicants bought the property when it was already subject to such restrictions, and therefore it considers that the purchase price at the time reflected such restrictions. While the applicants consider that the Government`s claim to that effect was unsubstantiated (see

paragraphs 37 and 38 above), the Court notes that according to the evaluations submitted by the applicants, the property in 1988, date when they purchased it, had a rental market value of EUR 6,857 annually. The Court observes that such a sum in rent would not be appropriate for a property purchased in the same year at EUR 25,600, if that were its real sale value. In consequence it must be accepted that the limitations on the property affected the purchase price.

*89. The Court reiterates that an award in respect of pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he or she would have enjoyed had the breach not occurred (see, mutatis mutandis, **Kingsley v. the United Kingdom** [GC], no. 35605/97, § 40, ECHR 2002-IV). It therefore considers that interest should be added to the award in order to compensate for the loss of value of the award over time (see **Runkee and White v. the United Kingdom**, nos. 42949/98 and 53134/99, § 52, 10 May 2007). As such, the interest rate should reflect national economic conditions such as levels of inflation and rates of interest (see, for example, **Akkuş v. Turkey,** 9 July 1997, Reports of Judgments and Decisions 1997-IV, § 35; **Romanchenko v. Ukraine**, no. 5596/03, 22 November 2005, § 30, unpublished; and **Prodan v. Moldova**, no. 49806/99, § 73, ECHR 2004-III (extracts)). It notes that the applicants claimed the statutory rate of eight per cent, and the Government`s objection in that respect. The Court considers that a rate of five per cent interest is more realistic (see **Amato Gauci**, cited above, § 78, and **Ghigo v. Malta** (just satisfaction), no. 31122/05, § 20, 17 July 2008) thus a one-off payment at 5% interest should be added (see **Anthony Aquilina**, cited above, § 72, in fine).*

90. Lastly, it is not for the Court to award the claim concerning renovation work which was not entered into by this Court.

91. The Court, thus, awards the applicants the sum of EUR 170,000 jointly.

92. The Court further considers that the applicants must have sustained feelings of anxiety and stress, having regard to the nature of the breach. It therefore awards EUR 3,000 jointly in respect of non-pecuniary damage.

Fuq l-istess binarju kienet id-decizjoni li tat l-ECtHR fil-kaz ta` **Portanier v. Malta** fis-27 ta` Novembru 2019 (App. 55747/16) fejn inghad hekk :-

> *"55. The Court notes that it has repeatedly found that the sums awarded in compensation by the Constitutional Court do not constitute adequate redress. The Court makes reference to its considerations in paragraphs 24 and 25 above. The Court considers that, just like an award for pecuniary damage under Article 41 of the Convention, an award for pecuniary damage made by a domestic court must be intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It transpires from the information and cases brought before the Court that this is often not the case. Such pecuniary awards are also often not accompanied by an adequate award of non-pecuniary damage and/or an order for the payment of the relevant costs (ibid. § 90 and Grech and Others, cited above, § 62). No domestic case-law dispelling such conclusions has been brought to the Court`s attention in the present case.*
>
> *56. In the light of the above considerations relating to the relevant time, the Court concludes that although constitutional redress proceedings are an effective remedy in theory, they were not so in practice, in cases such as the present one. In consequence, they cannot be considered an effective remedy for the purposes of Article 13 in conjunction with Article 1 of Protocol No. 1 concerning arguable complaints in respect of the rent laws in place, which, though lawful and pursuing legitimate objectives, impose an excessive individual burden on applicants.*
>
> ***...***
>
> *62. The Court must proceed to determine the compensation the applicant is entitled to in respect of the loss of control, use and enjoyment of the property which he has suffered for the period December 2008 to September 2017, when the violation came to an end.*
>
> *63. The Court notes that the annual rental value of the property estimated on the basis of its sale value according to the court-appointed architect was EUR 5,600. Nevertheless the domestic court considered its value to be more likely EUR 3,000 to 4,000 (see paragraph 14 above). The latter appears to be in line with the Government`s architect`s valuation which also*

reflects similar figures. With that in mind, in assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It has also considered the legitimate purpose of the restriction suffered, bearing in mind that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see, inter alia, Ghigo v. Malta (just satisfaction), no. 31122/05, § 18 and 20, 17 July 2008). Furthermore, the rent already received by the applicant for the relevant period must be deducted.

64. The Court reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It therefore considers that interest should be added to the above award in order to compensate for the loss of value of the award over time. As such, the interest rate should reflect national economic conditions, such as levels of inflation and rates of interest. The Court thus considers that a one-off payment of 5% interest should be added to the above amount (ibid., § 20).

65. The Court thus awards the applicant EUR 8,000.

Issir referenza wkoll ghall-gurisprudenza mill-aktar ricenti, senjatament id-decizjoni tal-ECtHR fil-kaz ta` **Marshall and Others v. Malta** tal-11 ta` Gunju 2020 fejn inghad :-

"94. The Court must proceed to determine the compensation the applicants are entitled to in respect of the loss of control, use and enjoyment of the property which they have suffered. However, the Court notes that the only valuation submitted by the court-appointed architect referred to 2014. The rental value of the premises was clearly not the same in the preceding decades. In consequence the Court is unable to identify in which year the disproportionality arose. For the same reasons the Court considers that it has no objective basis on which to determine the pecuniary damage for the years preceding 2014.

95. Thus, in assessing the pecuniary damage sustained by the applicants, the Court has, as far as appropriate, considered

the estimates provided and had regard to the information available to it on rental values on the Maltese property market during the relevant period. It has also considered the legitimate purpose of the restriction suffered, bearing in mind that legitimate objectives in the "public interest", such as those pursued in measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value (see, inter alia, Ghigo v. Malta (just satisfaction), no. 31122/05, § 18 and 20, 17 July 2008). In the present case however, the Court keeps in mind that the property was not used for securing the social welfare of tenants or preventing homelessness (compare, Fleri Soler and Camilleri v. Malta (just satisfaction), no. 35349/05, § 18, 17 July 2008). Thus, the situation in the present case might be said to involve a degree of public interest which is significantly less marked than in other cases and which does not justify such a substantial reduction compared with the free market rental value (see, Zammit and Attard, cited above, § 75).

96. Furthermore, the sums already received by the applicants for the relevant period must be deducted.

97. The Court reiterates that an award for pecuniary damage under Article 41 of the Convention is intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred. It therefore considers that interest should be added to the above award in order to compensate for loss of value of the award over time. As such, the interest rate should reflect national economic conditions, such as levels of inflation and rates of interest. The Court thus considers that a one-off payment of 5% interest should be added to the above amount.

98. The Court thus awards the applicants, jointly, EUR 500,000. As requested, the amount awarded is to be paid directly into the bank account designated by the applicants` representatives.

99. Bearing in mind the Constitutional Court`s award of EUR 25,000, which remains payable to the applicants, the Court need not award a further sum in non-pecuniary damage, it therefore rejects such claim."

ii) <u>Likwidazzjoni</u>

Il-proceduri odjerni min-natura taghhom huma diretti sabiex jindirizzaw lezjoni kostituzzjonali u/jew konvenzjonali.

Il-qorti sabet vjolazzjoni kemm tal-Art 37 tal-Kostituzzjoni kif ukoll tal-Art 1 Prot 1 tal-Konvenzjoni.

Ghalkemm id-diskrepanza bejn il-kera attwalment percepita (bl-applikazzjoni tal-Art 12 tal-Kap 158) u l-valur lokatizju li l-fond igib fis-suq hieles hija fattur determinanti sabiex ikun stabbilit jekk kienx vjolat il-principju tal-proporzjonalita`, fl-istess waqt hemm fatturi ohra li l-qorti ghandha tqis meta tigi ghal-likwidazzjoni tal-kumpens ghal-lezjoni subita.

Il-qorti rrilevat aktar kmieni li d-danni li jigu likwidati fi procediment kostituzzjonali u/jew konvenzjonali mhumiex danni civili li jigu likwidati f`kawzi kondotti fil-procedimenti ordinarji ghaliex huma danni li jigu likwidati minhabba l-vjolazzjoni accertata tal-jeddijiet fondamentali tal-persuna. Propju ghalhekk meta fi procediment tax-xorta bhal dak tal-lum il-qorti tigi biex taghmel il-likwidazzjoni ghandha tqis fatturi li ghandhom rilevanza u li jincidu fuq il-komputazzjoni tal-quantum tal-kumpens.

Dwar quantum ta` kumpens, kemm f`danni pekunjarji, kif ukoll f`danni morali, il-qorti tosserva li ma hemmx uniformita` ghaliex il-qrati taghna kienu kawti sabiex iqisu kull kaz fuq il-fattispeci partikolari tieghu.

a) <u>Danni pekunjarji</u>

- **<u>Osservazzjoni generali</u>**

Fejn si tratta ta` danni <u>pekunjarji</u> din il-qorti hija tal-fehma illi, tenut kont tal-quantum tal-likwidazzjonijiet li saru mill-ECtHR f`kazi fejn tirrizulta vjolazzjoni tal-Art 1 Prot 1 tal-Konvenzjoni li fihom Malta tkun l-intimata, fl-ahjar interess tal-gustizzja, il-qrati taghna ghandhom ifasslu <u>linji gwida</u> meta tigi biex issir likwidazzjoni, bla ma jiddipartixxu mill-principju li kull kaz ghandu jkun gudikat fuq il-fatti u cirkostanzi partikolari tieghu.

Il-qorti sejra tghid x`ghandhom ikunu l-linji gwida <u>u</u> kif ghandhom jigu applikati ghall-kaz prezenti.

- **<u>Il-massimu</u>**

Il-kostatazzjonijiet, l-osservazzjonijiet u l-konkluzjonijiet tal-perit tekniku li kien mahtur fil-kawza tal-lum jikkostitwixxu **<u>prova ta` fatt</u>**.

Fir-relazzjoni peritali hemm inkluza tabella (a fol 68) li turi ghaz-zmien ta` bejn l-1 ta` Lulju 1981 u l-31 ta` Dicembru 2019 il-valur lokatizju fis-suq tal-fond 10, Triq il-Karmnu, Zabbar, kien ilahhaq total ta` **<u>€91,845</u>**. Dan l-ammont huwa maqsum u mifrux fuq perijodi ta` hames snin bejn l-ewwel u l-ahhar data.

Aktar kmieni, il-qorti ddikjarat li kienet sejra taghmel taghha dak li rrizulta mir-relazzjoni anke ghaliex ma kienx hemm kontestazzjoni dwarha minn ebda parti fil-kawza.

Il-figura ta` €91,845 tikkostitwixxi <u>l-massimu</u> tad-danni pekunjarji. Dan l-ammont ghandu pero` jkun aggjustat skont il-linji gwida li sejra taghti.

- **<u>Linji gwida</u>**

i. <u>Ghandha titnaqqas il-kera li kienet mhallsa u accettata fiz-zmien in kwistjoni</u>

Jirrizulta ppruvat li wara li ghalaq il-kuntratt tas-subcens temporanju, l-intimata Zahra baqghet fil-post b`titolu ta` kera. Jidher li hallset il-kera dovuta saz-zmien meta din giet rifjutata mir-rikorrenti.

Il-qorti tghid illi l-kera kollha li hallset l-inkwilina fil-perijodu in kwistjoni ghandha tonqos mill-figura ta` €91,845.

Jirrizulta li c-cens temporanju ghalaq fit-30 ta` Gunju 1981.

Ma rrizultax kjarament mill-provi kemm thallset kera matul iz-zmien billi ma kienux prezentati ricevuti minn ebda parti.

Il-paragrafu (5) tar-rikors promotur huwa ndikattiv, anke fejn huwa sieket.

Jidher li bejn l-1981 u l-1986, l-inkwilini hallsu bhala kera dak li kienu jhallsu bhala cens, i.e. Lm 32 fis-sena, li jfisser Lm 160 **(€372.09**).

Ghaz-zmien ta` bejn l-1986 u l-1992, jidher li hallsu kera ta` Lm 43 fis-sena, li jfisser Lm 258 (**€600**).

Ghaz-zmien ta` bejn l-1992 u l-2009, jidher li hallsu kera ta` Lm 86 fis-sena, li jfisser Lm 1,462 **(€3400**).

Ghaz-zmien ta` bejn l-2009 u l-2013, jidher li hallsu kera ta` €210 fis-sena, li jfisser **€840**.

Ghaz-zmien ta` bejn l-2013 u 2016, jidher li hallsu kera ta` €214 fis-sena, li jfisser **€642**.

Ghaz-zmien ta` bejn l-2016 u l-2019, jidher li hallsu kera ta` €220 fis-sena, li jfisser **€660**.

Ghalhekk thallset is-somma totali ta` €6514.09, li qeghda tigi arrotondata ghal **€6514**.

B`hekk il-figura originali ta` €91,845 ghandha tinzel ghal €85,331.

ii. L-interess generali

Il-qorti m`ghandhiex dubju mis-siwi u mil-legittimita` tal-intervent legislattiv tenut kont tac-cirkostanzi taz-zmien li sar.

Dan il-fattur ghandu jwassal ghal <u>tnaqqis ta` 35%</u> fil-figura ridotta ta` €85,331.

Qeghda tkun adottata rata ta` 35% sabiex tpatti ghas-snin l-ohra li ha l-Istat Malti sabiex jipproponi bidliet fil-ligijiet sabiex isewwi l-isproporzjon li garrbu s-sidien.

Ir-rata kienet tkun diversa li kieku l-Istat Malti gharaf jintervjeni fil,-pront qabel ma beda jsib ruhu rinfaccjat b`decizjonijiet sfavorevoli moghtija mill-qrati taghna u mill-ECtHR.

Il-figura tinzel ghalhekk ghal €55,465.16 li qeghda tigi arrotondata ghal **<u>€55,465.</u>**

iii. <u>Il-fond</u>

Il-qorti rat ir-relazzjoni.

Qieset b`reqqa dak li xehed il-perit tekniku ghal domandi li saru in eskussjoni.

Rat ukoll ir-ritratti li kienu prezentati mill-perit tekniku.

Tqis illi l-fond ghandu potenzjal ta` zvilupp (ara fol 77).

Dan huwa fattur li jzid il-piz kontra s-sidien.

Ghalhekk m`ghandux ikun hemm tnaqqis.

iv. <u>Ir-ripreza tal-fond</u>

Ghalkemm il-qorti ddikjarat li l-intimata Zahra ma tistax tibqa` tistrieh fuq l-applikazzjoni favur taghha tal-Art 12 tal-Kap 158 sabiex tibqa` tokkupa l-fond bhala residenza taghha, fl-istess waqt tissussisti incertezza **oggettiva** dwar meta u jekk ir-rikorrenti jkunux jistghu jiehdu lura l-pussess battal tal-fond.

Ghalhekk m`ghandux ikun hemm tnaqqis.

v. Passivita`

Kemm ir-rikorrenti kif ukoll l-antekawza taghhom baqghu jaccettaw il-hlas tal-kera sa ftit taz-zmien qabel kienet istitwita din il-kawza.

Ma jirrizultax li qatt kienu istitwiti proceduri gudizzjarji dwar il-fond kontra l-familja Zahra.

Philip Grima miet fit-2 ta` Dicembru 2015. Il-wirt tieghu ghadda ghand ir-rikorrenti b`effett minn dik id-data.

Li ssir talba sabiex il-valur lokatizju tal-fond jigi stmat b`effett mill-1 ta` Lulju 1981 hija eccessiva u sproporzjonata.

Il-qorti hija tal-fehma li r-rikorrenti u l-antekawza taghhom m`ghandhomx jithallew jibbenfikaw mill-passivita` taghhom. Ghalhekk sejra taghmel tnaqqis ulterjuri ta` 35%.

B`hekk l-ammont jinzel minn €55,465 ghal €30,052, liema ammont qieghed jigi arrotondat ghal **€30,000**.

vi. Riassunt

Id-danni pekunjarji qeghdin jigu likwidati fl-ammont ta` €30,000.

b) <u>Danni mhux pekunjarji</u>

Indipendentement mid-danni pekunjarji li jikkostitwixxu telf effettiv ghar-ragunijiet fuq premessi, il-qorti tghid li r-rikorrenti haqqhom jircievu wkoll il-hlas ta` danni morali fl-ammont ta` <u>€5,000</u> ghaliex sprovvisti minn rimedju ordinarju effettiv kif jindirizzaw il-lanjanzi taghhom kienu kostretti jirrikorru ghal procediment ta` din ix-xorta semplicement ghaliex l-Istat Malti qaghad lura ghal ghexieren ta` snin milli jsib tarf tal-izbilanc u tal-isproporzjon li kienu qeghdin igarrbu sidien ta` proprjetajiet b`legislazzjoni adegwata u effettiva.

5. <u>Il-hames talba</u>

Is-somma globali li qeghda tigi likwidata fl-ammont ta` <u>€35,000</u> ghandha tithallas <u>biss</u> mill-intimat Avukat tal-Istat.

VI. <u>Spejjez</u>

Il-qorti tghid li l-intimata Zahra mhux biss m`ghandhiex thallas kumpens <u>izda lanqas</u> spejjez gudizzjarji, billi rrizulta li qaghdet mal-ligijiet vigenti. Dan premess, u in vista tar-risultanzi, l-ispejjez gudizzjarji ghandhom jithallsu fl-intier taghhom mill-Avukat tal-Istat.

<u>Decide</u>

Ghar-ragunijiet kollha premessi, il-qorti qeghda taqta` u tiddeciedi din il-kawza billi :-

Tastjeni milli tiehu konjizzjoni ulterjuri tat-tieni (2) eccezzjoni tal-intimata Spira Zahra.

Tichad it-tielet (3) eccezzjoni tal-intimata Spira Zahra.

Tichad l-eccezzjonijiet l-ohra tal-intimati.

Tipprovdi dwar l-ewwel talba kif dedotta billi tiddikjara u tiddeciedi li fil-konfront tar-rikorrenti l-operazzjonijiet tal-Artikolu 12, partikolarment is-subartikolu (2), tal-Kap. 158 tal-Ligijiet ta` Malta, kif emendat bl-Att XXIII tal-1979, u bl-operazzjonijiet tal-ligijiet vigenti, qeghdin jaghtu dritt ta` rilokazzjoni lill-intimata Spira Zahra li jaghmilha difficli u haga x`aktarx incerta ghar-rikorrenti li jiehdu lura l-pussess tal-propjeta` taghhom.

Tilqa` t-tieni talba.

Riferibbilment ghat-tieni talba, tiddikjara u tiddeciedi wkoll illi r-rikorrenti ghandhom jedd ghall-ghoti ta` kumpens fl-ghamla ta` danni pekunjarji u danni morali.

Riferibbilment ukoll ghat-tieni talba, tiddikjara u tiddeciedi li l-intimata Spira Zahra ma tistax tibqa` tistrieh fuq id-disposizzjonijiet l-Art 12 tal-Kap 158 sabiex tibqa` tokkupa l-fond 10, Triq il-Karmnu, Zabbar, bhala r-residenza ordinarja taghha.

Tilqa` t-tielet talba.

Riferibbilment ghar-raba` talba, tillikwida favur ir-rikorrenti s-somma komplessiva ta` hamsa u tletin elf ewro (€35,000) in kwantu ghal tletin elf ewro (€30,000) in linea ta` danni pekunjarji, u in kwantu ghal hamest elef ewro (€5,000) in linea ta` danni morali ghall-vjolazzjoni li garrbu tad-drittijiet fondamentali taghhom skont kif deciz fit-tieni u t-tielet talbiet.

Riferibbilment ghall-hames talba, tordna lill-intimat Avukat tal-Istat sabiex ihallas lir-rikorrenti s-somma hekk likwidata, bl-imghax legali b`effett mil-lum.

Tordna li l-ispejjez kollha ta` din il-kawza ghandhom jithallsu mill-Avukat tal-Istat.

Tordna lir-Registratur tal-Qorti sabiex kif appena din is-sentenza tghaddi in gudikat jibghat kopja taghha lill-Ispeaker tal-Kamra tad-Deputati kif irid l-Art 242 tal-Kapitolu 12 tal-Ligijiet ta` Malta.

Onor. Joseph Zammit McKeon
Imhallef

Amanda Cassar
Deputat Registratur